Nos. 93-1456 and 93-1828

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

U.S. TERM LIMITS, *et al.*,
Petitioners

v.

RAY THORNTON, *et al.*,
Respondents

STATE OF ARKANSAS ex rel. WINSTON BRYANT,
Attorney General of the State of Arkansas,
Petitioner

v.

BOBBIE E. HILL, *et al.*,
Respondents

On Writ of Certiorari to the Supreme Court of Arkansas

BRIEF FOR THE STATE PETITIONER

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QUESTION PRESENTED

Amendment 73 to the Arkansas Constitution restricts access to the ballot for certain candidates for the offices of United States Representative and Senator. Amendment 73 provides that a person who has been elected to three or more terms as a member of the United States House of Representatives, or to two or more terms as a member of the United States Senate, cannot thereafter have his or her name placed on the ballot for that office, although a candidate may still be elected through a write-in campaign. The question presented by this case is the following:

Whether a State has the power under the Elections Clause of the Constitution, Art. I, § 4, Cl. 1, to restrict an incumbent candidate's access to the ballot in such a manner, or whether the Qualifications Clauses of the Constitution, Art. I, § 2, Cl. 2, and § 3, Cl. 3, prohibit a State from imposing such a ballot access restriction.

PARTIES TO THE PROCEEDING

The following parties appeared in the court below:

Petitioner:

State of Arkansas ex. rel. Attorney General Winston Bryant

Respondents:

Bobbie Hill, individually and on behalf of the Arkansas League of Women Voters; Dick Herget, individually

State Constitutional Officers:

W. J. "Bill" McCuen, Secretary of State; Julia Hughes Jones, State Auditor; Jimmie Lou Fisher, State Treasurer; Winston Bryant, Attorney General; Charlie Daniels, Land Commissioner, individually and in their capacities as candidates for public office

United States Senators:

Dale Bumpers and David Pryor

United States Representatives:

Ray Thornton, Blanche Lambert, Jay Dickey and Tim Hutchinson; and former representatives Beryl Anthony, Bill Alexander and John Paul Hammerschmidt

Members, Arkansas State Legislature, former and current:

Senate:

James C. "Jim" Scott, W. D. "Bill" Moore, Jr., Mike Ross, Wayne Dowd, Neely Cassady, George Hopkins, Jean C. Edwards, Jay Bradford, Bill Walters, Travis A. Miles, Lu Hardin, Eugene "Bud" Canada, Charlie Cole Chaffin, Vic Snyder, Jerry D. Jewell, Cliff Hoofman, Stanley Russ, Mike Beebe, Roy C. "Bill" Lewellen, Mike Everett, Steve Bell, Allen Gordon, Jon S. Fitch, Morril Harriman, Mike Bearden, Jerry

P. Bookout, Mike Todd, Nick Wilson, Steve Luelf, Joe E. Yates, David R. Malone, Clarence Bell, Jack Anderson Gibson, Max Howell, John Pagan, Kevin Smith, Jim Keet, Bill Gwatney, and Reid Holiman

House:

Railey A. Steele, Jerry E. Hinshaw, Louis McJunkin, Charles W. Stewart, Bob Fairchild, Jerry Hunton, Edward F. Thicksten, B. G. Hendrix, Carolyn Pollan, Ralph "Buddy" Blair, Jr., Jerry D. King, W. R. "Bud" Rice, Ode Maddox, Gus Wingfield, Hoye D. Horn, David Beatty, Arthur Carter, Charles Whorton, Jr., Frank J. Willems, Lloyd R. George, Keith Wood, Bob J. Watts, L. L. "Doc" Bryan, Bruce Hawkins, Ted E. Mullenix, James C. Allen, John W. Parkerson, Bob "Sody" Arnold, Judy Smith, John H. Dawson, Billy Joe Purdom, Roger L. Rorie, Randy Thurman, W. H. "Bill" Sanson, Bill Stephens, Larry Mitchell, H. Lacy Landers, Veo Easley, Bobby G. Newman, Jodie Mahony, Phil Wyrick, Myra Jones, Jim Argue, Jr., William L. "Bill" Walker, Jr., Mark Pryor, Irma Hunter Brown, Carol "Coach" Henry, James G. Dietz, Doug Wood, Mike Wilson, William H. Townsend, Larry Goodwin, John E. Miller, John Paul Capps, J. Sturgis Miller, Josetta E. Wilkins, Jacqueline J. Roberts, Charlotte Schexnayder, Jimmie Don McKissack, Michael K. Davis, Thomas G. Baker, Albert "Tom" Collier, V. O. "Butch" Calhoun, Wanda Northcutt, James T. Jordan, N.B. "Nap" Murphy, Jim Holland, Tim Woolridge, Bobby G. Wood, Bobby L. Hogue, Owen Miller, J. L. "Jim" Shaver, Pat Flanagin, Wayne Wagner, Walter M. Day, Christine Brownlee, Ben McGee, Lloyd C. McCuiston, Jr., Bob McGinnis, Ernest Cunningham, Jimmie L. Wilson, Bynum Gibson, Tim Hutchinson, James Edward "Ed" Gilbert, Richard L. "Dick" Barclay, Bill D. Porter, Tommy E. Mitchum, James H. "Jim" Roberts, William P. "Bill" Mills, Robert Vaughan "Bob" Teague, David E. Roberts, Arthur

"Art" Givens, Jr., Jack H. McCoy, Robert Wayne "Bobby" Tullis, John M. Lipton, G. W. "Buddy" Turner, Tom Forgey, Travis Dowd, Dana A. Moreland, Jim Von Gremp, Dave Bisbee, Randy Bryant, John Hall, Jim Hill, Dennis Young, Armil O. Curran, D. R. "Buddy" Wallis, Vada Sheid, Greg Wren, E. Ray Stalnaker, Mark Riable, Dee Bennett, Joe Molinaro, David Choate, Bill Fletcher, Marian D. Owens, and Claud V. Cash

Others:

George O. Jernigan, Asa Hutchinson, Lula Binns, Shirley McFarlin, Richard Bifford and Bonnie Johnson, as members of the Arkansas State Board of Election Commissioners

Republican Party of Arkansas

Democratic Party of Arkansas

Arkansans for Governmental Reform, Inc., and Lawrence Cook, Timothy Jacob, Steve Munn, Tim Epperson, Lance Curtis, Miles King, David Jamison, Sy Mendenhall, Teresa Ulrey, Eual Petty, Tommy Munn, Tommy White, Dr. Bill McCollum, Richard Trubey, Leo Perry, Bruce Burks, Howard Studdard, J.D. Crow and Claudie Ray Ollar

U.S. Term Limits, Inc., Frank Gilbert, Greg Rice, Lon Schultz, and Spencer Plumley

Americans for Term Limits and Steve Goss

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BRIEF FOR THE STATE PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Arkansas, 93-1456 Pet. App. (hereinafter Pet. App.) 1a-43a, is reported at 316 Ark. 251, 872 S.W.2d 349. The opinions of the circuit court, Pet. App. 45a-52a, 53a-62a, are unreported.

JURISDICTION

The judgment of the Supreme Court of Arkansas was entered on March 7, 1994. A petition for rehearing was denied on March 14, 1994. Pet. App. 44a. The petition in No. 93-1456 was filed on March 18, 1994, and the petition in No. 93-1828 was filed on May 16, 1994. Both petitions were granted and consolidated on June 20, 1994. The jurisdiction of this Court rests under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Pertinent constitutional provisions are reprinted in App. A, *infra*.

STATEMENT

1. At issue in this case is whether the Constitution allows the States to structure their electoral procedures for the offices of United States Representative and Senator in order to ensure that the institutional advantages of incumbency (particularly long-term incumbency) neither create nor perpetuate modern-day legislative fiefdoms that, by crippling the ability of challengers to unseat officeholders, render the political process unresponsive to the electorate. The Framers of the Constitution envisioned frequent turnover for legislative offices, especially for the House of Representatives, whose members must stand for re-election biennially. For most of our history, the Framers' prediction was correct. But in recent decades, incumbents in the federal, state, and local political systems have been re-elected at an unprecedented—and, to some, alarming—rate.[1] In response to that trend, since 1990 more than 22 million votes have been cast in 15 States to enact state laws through citizen initiatives that either prohibit individuals from holding congressional office for more than a fixed number of terms or that restrict access

[1] Charts depicting that trend in Arkansas and nationwide are reprinted in App. I, *infra*.

to the ballot by incumbents, while still permitting them to be elected via write-in campaigns.

Starting in 1990, States began to experiment (more accurately, *re*experiment) with term limits and, subsequently, ballot access laws as a way of addressing real and perceived flaws in today's electoral process. In that year, Oklahoma adopted a state constitutional amendment limiting legislative terms, while California and Colorado went a few steps further. California limited the terms of all statewide elected officials, including legislators, and Colorado imposed a 12-year cap on its delegates' service in Congress. In 1991, Washington voters rejected the retroactive imposition of term limits on state and federal officeholders, but the following year the voters approved a prospective ballot access law. Also in 1992, citizens in 13 other States approved laws imposing term limits on elected state and federal officials or (in different ways) restricting incumbents' opportunity to appear on the ballot. Sula P. Richardson, *Term Limits for Federal and State Legislators* 3-5 (CRS Report Mar. 28, 1994).

This case involves the constitutionality of one of the latter type of election laws. At the November 1992 general election, the Arkansas electorate, by a 60% to 40% margin, endorsed an initiative adopting Amendment 73 to the Arkansas Constitution. Amendment 73 limits the terms that can be held by certain state officers, such as the Governor, Lieutenant Governor, and Attorney General.[2] Amendment 73 also provides that a person who has been elected to three or more terms as a member of the United States House of Representatives, or to two or more terms as a member of the United States Senate, cannot thereafter have his or her name placed on the

[2] State offices are not governed by the Qualifications Clauses of Article I, which apply only to United States Representatives and Senators. The Arkansas Supreme Court upheld the term limits imposed by Amendment 73 on state officers, and that aspect of the ruling below is not before the Court.

ballot for that office, although a candidate may still be elected through a write-in campaign. Amendment 73 rests on the belief, as stated in its preamble, that "elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people." The Amendment was designed to rectify the deleterious effects of "[e]ntrenched incumbency," which have included "reduced voter participation and an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers." The question presented by this case is whether the Elections Clause of the Constitution, Art. I, § 4, Cl. 1, and the Tenth Amendment permit the State to remedy those ills through Amendment 73, or whether the Qualifications Clauses, Art. I, § 2, cl. 2, and § 3, Cl. 3, prohibit Arkansas from pursuing such corrective action.

2. In November 1992, respondents Bobbie E. Hill, *et al.*, filed a complaint in the Circuit Court of Pulaski County, seeking a declaratory judgment that Amendment 73 to the Arkansas Constitution was unconstitutional under Articles I and IV of the Constitution of the United States and the First and Fourteenth Amendments, insofar as Amendment 73 impaired the ability of an incumbent Representative or Senator to be re-elected. On cross-motions for summary judgment, the circuit court held that Amendment 73 violated state law and the Qualifications Clauses of the Constitution, Art. I, § 2, Cl. 2, and § 3, Cl. 3. Pet. App. 45a-52a, 53a-62a. The court reasoned that "[Amendment 73] is purely and simply a restriction on the qualifications of a person seeking federal congressional office," *id.* at 49a, and that the Qualifications Clauses forbid States from imposing qualifications on federal officeholders in addition to the ones set forth in Article I, *id.* at 48a-49a.[3]

[3] The circuit court rejected respondents' contentions that Amendment 73 violated Article IV of the Constitution, as well as the First and Fourteenth Amendments. Pet. App. 59a, 60a.

3. By a divided vote, the Arkansas Supreme Court affirmed in part and reversed in part. Pet. App. 1a-43a. The Court held that Amendment 73 is not invalid under state law, but does violate Article I of the Constitution.

a. A plurality concluded that the historical background to the adoption of the Qualifications Clauses was "helpful" but ultimately "inconclusive regarding the issue at hand." Pet. App. 12a. Nevertheless relying, inter alia, on that history and *Powell* v. *McCormack*, 395 U.S. 486 (1969), the plurality reasoned that Article I "enumerated three benchmarks for congressional service—age, citizenship, and residency"—and that "[n]o other qualifications were included." *Id.* at 12a. That conclusion is a sensible one, the plurality wrote, since it ensures that the qualifications for Representatives and Senators are uniform nationwide. *Id.* at 14a.

The plurality also ruled that Amendment 73 cannot be upheld as an exercise of the State's power to regulate candidates' access to the ballot. Pet. App. 14a-15a. The plurality reasoned that the intent and effect of Amendment 73 "are to disqualify congressional incumbents from further service" by superimposing "[a]n additional qualification" atop the ones already specified in Article I: *viz.*, "prior service." *Id.* at 15a. The plurality acknowledged that the Amendment does not "totally disqualif[y]" incumbents from becoming officeholders, since an incumbent can run as a write-in candidate for such an office. *Id.* But "[t]hese glimmers of opportunity" were, according to the plurality's view, too "faint" to "salvage Amendment 73 from constitutional attack." *Id.* Finally, because Amendment 73 violated the Qualifications Clauses, the plurality determined that the Amendment could not be upheld under the power reserved to the States by the Tenth Amendment. *Id.*

In separate opinions, Justices Dudley and Brown concurred in the ruling that Amendment 73 violates the Qualifications Clauses. Pet. App. 26a-27a, 41a-42a. Justice

Dudley stated that Amendment 73 is unconstitutional because the Framers rejected term limits for Representatives and Senators when drafing the Constitution and because allowing States to impose additional qualifications beyond the ones specified in Article I "is antithetical to republican values." *Id.* at 26a. He acknowledged that whether the ballot access limitations imposed by Amendment 73 are constitutional "is a close question and difficult issue," *id.*, but he ultimately found the limitations invalid under Article I, because "as a practical matter, write-in candidates are at a distinct disadvantage" in an election, *id.* at 27a. Justice Brown also noted that "the issue is not entirely free from doubt," but, he, too, ultimately concluded that the Framers had considered and rejected term limits for legislative offices when drafting Article I. *Id.* at 41a. The advantages of having uniform, nationwide qualifications for federal offices, he added, fortified his conclusion. *Id.* at 41a-42a.[4]

b. Justices Hays and Cracraft dissented. Pet. App. 33a-35a, 37a-39a. According to Justice Hays, the Tenth Amendment guarantees States the right to structure their own forms of government and, in so doing, to set qualifications for candidates to state or federal offices as long as those requirements do not violate the Qualifications Clauses. Since those Clauses fix only "the *minimum* requirements rather than the *exclusive* requirements," *id.* at 34a, States may add additional qualifications under state law, *id.* at 34a-35a. Justice Cracraft determined that the ballot access restrictions set by Amendment 73 are not "qualifications" for purposes of Article I, because they do not bar an elected candidate from holding office

[4] The Arkansas Supreme Court did not address the question whether, as applied to federal office, Amendment 73 violates Article IV of the Constitution or the First and Fourteenth Amendments. That court did address whether the term limits imposed on state officials violated the First or Fourteenth Amendments, and held that they do not.

if he receives the majority of votes cast. *Id.* at 37a. Relying on *Hopfmann* v. *Connolly*, 746 F.2d 97 (1st Cir. 1984), vacated in part on other grounds, 471 U.S. 459, reaffirmed on remand, 769 F.2d 24, 25 n.1 (1985), cert. denied, 479 U.S. 1023 (1987), and *Joyner* v. *Mofford*, 706 F.2d 1523 (9th Cir.), cert. denied, 464 U.S. 1002 (1983), Justice Cracraft stated that "the test to determine whether or not the restriction amounts to a qualification within the meaning of Article I, Section 3, is whether the candidate could be elected if his name were written in by a sufficient number of electors." Pet. App. 38a (internal punctuation omitted). Amendment 73 passed that test, he determined, since "[u]nder our liberal write-in laws, an incumbent can be elected to congressional office and, if elected, serve the term for which elected." *Id.* at 37a.

SUMMARY OF ARGUMENT

I. States have broad power under Article I and the Tenth Amendment to regulate federal elections, and they have exercised that power throughout our history. For example, States have imposed district residency requirements on Representatives and have required federal officials to be qualified voters, which excludes felons and the mentally incompetent. Term limits and ballot access laws are also legitimate, historically-based, judicially-approved regulations that are designed to even the playing field between incumbents and challengers, and ultimately to enhance the responsiveness of delegates.

II. States can regulate the voting process, even if such regulations may exclude some candidates from office. Amendment 73 excludes long-term incumbents from the ballot, but still permits them to be elected via write-in votes. The amendment thus is a reasonable regulation of ballot access, since it does not disqualify an incumbent from holding office as a matter of law.

III. States can impose qualifications on federal office atop the ones listed in Article I. The Qualifications Clauses deny certain persons the right to hold federal elected office; the Clauses do not guarantee anyone the right to campaign for such office. The text of Article I and its drafting history show that the Qualifications Clauses are not exclusive. *Powell* also does not control this case. *Powell* held only that each House cannot add new qualifications to Article I, not that the States are barred from doing so.

ARGUMENT

AMENDMENT 73 TO THE ARKANSAS CONSTITUTION IS A LAWFUL EXERCISE OF STATE AUTHORITY OVER THE ELECTORAL PROCESS

The Arkansas Supreme Court held Amendment 73 unconstitutional by focusing on the Qualifications Clauses without considering the Elections Clause or Tenth Amendment. That approach was mistaken. The Constitution contains numerous provisions establishing the electoral process, and the entire fabric of law must be read as a whole. *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968). Those provisions make clear that, as explained in Point I, just as States can regulate elections for state office, *Gregory* v. *Ashcroft*, 111 S. Ct. 2395, 2400-03 (1991), so, too, can States regulate federal elections. Term limits and ballot access restrictions are a legitimate exercise of that authority. Moreover, as explained in Point II, States can regulate access to the ballot even if doing so excludes some candidates from office. *Storer* v. *Brown*, 415 U.S. 724, 728-37, 746 n.16 (1974). Amendment 73 is best viewed as a permissible ballot access regulation and should be upheld for that reason. Finally, even if Amendment 73 is deemed to impose qualifications on office, States can impose qualifications for federal office in addition to the ones listed in Article I, as explained in Point III. The judgment of the Arkansas Supreme Court should therefore be reversed.

I. STATES HAVE BROAD POWER UNDER THE ELECTIONS CLAUSE AND THE TENTH AMENDMENT TO REGULATE FEDERAL ELECTIONS

A. States Have The Power To Regulate The Electoral Process For State And Federal Officials

1. *States have the inherent power to regulate state elections*

Throughout our history, the States have exercised their authority to regulate their own electoral processes; none has left elections to the free market. Regulation of the electoral process began during the colonial and revolutionary periods, App. B, *infra*, and continues today. All 50 States have constitutional or statutory eligibility prerequisites for state office. For example, 41 States have minimum age or residency requirements for governor or state legislator. Other typical restrictions are the exclusion of convicted felons from eligibility, *e.g.*, Ark. Const. Art. 19 § 3; *id.* Amend. 51, § 11(4), and limitations on the eligibility of civil servants for elected office, such as so-called "resign to run" laws.[5] Other common regulations include

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[5] The ban in this nation on felons holding office reaches back to at least 1661, when the Governor of Maryland ordered local sheriffs to restrain felons from holding office. Albert Edward McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America* 60 (1905); see 1 Charles Seymour & Donald Paige Frary, *How the World Votes* 234 (1918). Today, 37 States bar at least some convicted felons from holding or seeking office for the period of their imprisonment or disability, or for some period thereafter. *Developments in the Law: Elections*, 88 Harv. L. Rev. 1111, 1218-19 n.9 (1975); Special Project, *The Collateral Consequences of a Criminal Conviction*, 23 Vanderbilt L. Rev. 929, 987-997 (1970); see, *e.g.*, Cal. Penal Code § 424 (Deering 1985); Ga. Const. of 1976, art. 2, § 2, ¶ III (1990); Haw. Rev. Stat. § 19-4 (1985); Kan. Stat. Ann. § 21-3901(b) (Supp. 1993); Pa. Const. art. 2, § 7; Mich. Comp. Laws. § 3350 (1929); Miss. Code § 2907 (1993); Mont. Const. art. IV, § 4; N.C. Const. art. VI, § 8; N.H. Rev. Stat. Ann. § 607-A:2 (1955); N.M. Const. art. VII, § 2; Va. Const. art. II, §§ 1, 5. Those states generally disenfranchise convicted felons. See, *e.g.*, Kan. Const. art. V, § 2; Va. Const. art. II, § 1; *Richardson*

campaign contribution reporting and disclosure requirements, or contribution and expenditure limitations. See *Developments in the Law: Elections*, 88 Harv. L. Rev. 1111, 1217, 1223-30 (1975).

Arkansas regulates its electoral process comprehensively. The election code regulates the duties and powers of political parties, including the primary process and use of party loyalty oaths, 6A Ark. Code Ann. §§ 7-3-101 to 7-3-108 (Michie 1993); it establishes the composition, powers and responsibilities of state and county boards of election commissioners, *id.* §§ 7-4-101 to 108, 7-4-201 to 211, and 7-5-101; and it governs every aspect of the electoral process, such as voting qualifications; voter registration; the time and conduct of primaries, as well as general and special elections; the use and form of secret, write-in, and absentee ballots and voting machines; the calculation of election returns; and the circumstances requiring a runoff, *e.g.*, Ark Const. Amend. 50, §§ 1-4; *id.* Amend. 51, §§ 1-20; 6A Ark. Code Ann. tit. 7, ch. 5-8 (Michie 1993). And Arkansas election law defines various felonies and misdemeanors, such as casting more than one vote per election or using public facilities for campaign purposes, that disqualify a person from holding state office. *Id.* §§ 7-1-103 and 7-1-104.

2. *States also have the power to regulate federal elections*

The Constitution established "a system of dual sovereignty between the States and the Federal Government." *Gregory*, 111 S. Ct. at 2399. The process of electing federal officers reflects that division. Although the Constitution created the House of Representatives, the Senate, and the Presidency, it "submitted the regulation of elections for the federal government, in the first instance, to the local administrations." *The Federalist* No. 59, at 362-63 (A. Hamilton) (C. Rossiter ed. 1961). We have local elections for national office. Representatives are chosen by electors in each State qualified to vote for the most numerous branch of the state legislature. Art. I, § 2, Cl. 2. Senators originally were chosen by the legislature of each State, Art. I, § 3, Cl. 1, now by citizens, Amend. XVII. And the President is chosen by the Electoral College, whose members are appointed by state legislatures. Art. II, § 1, Cl. 1-2; Amend. XII.

Other sections of the Constitution expressly authorize the States to regulate federal elections or implicitly recognize that States have that power, just as they have inherent power to regulate elections for state officers, see *Burdick* v. *Takushi*, 112 S. Ct. 2059, 2063-64 (1992); *Gregory*, 111 S. Ct. at 2400-03; cf. *Coyle* v. *Smith*, 221 U.S. 559 (1911).[6] For instance, the Electors Clause, Art. I, § 2, Cl. 1, rests on the premise that the States can set voting qualifications, since it ties voting qualifications for the House of Representatives to whatever qualifications a State uses for the most numerous branch of its own legislature. This Court also has made clear that, although the Constitution forbids a State from denying a citizen the right to vote due to race, sex, age, or other arbitrary bases, Amends. XIV, XV, XIX, and XXVI,[7] a State has the power under Art. I, § 2, Cl. 1, to define voting qualifica-

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v. *Ramirez*, 418 U.S. 24 (1974) (upholding Cal. Const. art. II, § 2 (1976), as amended, Cal. Const. art. 2, § 4, which disenfranchises ex-felons). Numerous states also have so-called resign-to-run laws, which require a state officeholder to resign that position in order to run for another state or a federal office. *E.g.*, *Clements* v. *Fashing*, 457 U.S. 957 (1982) (upholding Texas resign-to-run law).

[6] See also *The Federalist* No. 4, at 292-93 (J. Madison) (C. Rossiter ed. 1961) ("The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."); James Wilson's Speech at a Public Meeting (Oct. 6, 1787), *reprinted in* 1 *The Debate on the Constitution* 64 (Bernard Bailyn ed. 1993) (hereinafter *Debate*) ("every thing which is not given, is reserved").

[7] See, *e.g.*, *Guinn* v. *United States*, 238 U.S. 347 (1915); *Carrington* v. *Rash*, 380 U.S. 89 (1965); *Quinn* v. *Millsap*, 491 U.S. 95 (1989).

tions.[8] Moreover, the Elections Clause of the Constitution, Art. I, § 4, Cl. 1, authorizes state legislatures to define the "Times, Places, and Manner" of electing Representatives and Senators. That provision ensures that "[t]he members and officers of the State governments * * * will have an essential agency in giving effect to the federal Constitution." *The Federalist* No. 44, at 287 (J. Madison); see *Carroll* v. *Becker*, 285 U.S. 380 (1932); *Koenig* v. *Flynn*, 285 U.S. 375 (1932); *Smiley* v. *Holm*, 285 U.S. 355 (1932); *Hawke* v. *Smith* (*No. 1*), 253 U.S. 221 (1920).

The power granted States by the Elections Clause includes more than the ability to select the location of polling booths or to tally votes. It is a "comprehensive" delegation of power "to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns[.]" *Smiley* v. *Holm*, 285 U.S. at 366; *Tashjian* v. *Republican Party of Connecticut*, 479 U.S. 208, 217 (1986); *Roudebush* v. *Hartke*, 405 U.S. 15, 24 (1972). This Court has held consistently that States have power under that Clause to regulate federal elections in order to protect, for example, the integrity of the process and prevent voter confusion. See, *e.g.*, *Burdick*, 112 S. Ct. at 2063-67.[9]

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[8] See, *e.g.*, *Minor* v. *Happersett*, 88 U.S. (21 Wall.) 162 (1874); *The Ku-Klux Cases (Ex parte Yarbrough)*, 110 U.S. 651, 663 (1884); *Davis* v. *Beason*, 133 U.S. 333, 346-47 (1890); *McPherson* v. *Blacker*, 146 U.S. 1, 38-39 (1892); *Williams* v. *Mississippi*, 170 U.S. 213, 222-25 (1898); *Mason* v. *Missouri*, 179 U.S. 328, 335 (1900); *Pope* v. *Williams*, 193 U.S. 621, 632 (1904); *Breedlove* v. *Suttles*, 302 U.S. 277, 283 (1937); *Lassiter* v. *Northhampton County Bd. of Elections*, 360 U.S. 45, 50-51 (1959); cf. *Murphy* v. *Ramsey*, 114 U.S. 15, 43-45 (1885) (Congress has the same power in the territories).

[9] See also, *e.g.*, *Burson* v. *Freeman*, 112 S. Ct. 1846, 1852 (1992); *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652, 660 (1990); *Tashjian*, 479 U.S. at 217; *Eu* v. *San Francisco Democratic Comm'n*, 489 U.S. 214, 231 (1989); *Storer* v. *Brown*, 415 U.S. at 728-37; *Bullock* v. *Carter*, 405 U.S. 134, 143, 145 (1972); *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971); *Oregon* v. *Mitchell*, 400 U.S. 112, 288 (1970) (opinion of Stewart, J.).

States historically have exercised that power. From before 1787 until today, States have overseen federal elections. As this Court explained in *Storer*, "States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates." 415 U.S. at 730.

States exercised their Elections Clause power shortly after the Constitution became law.[10] Some imposed additional qualifications on members of Congress atop those listed in the Qualifications Clauses. Virginia added property and residency requirements.[11] Georgia, Maryland,

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[10] The debates over Art. I, § 4, Cl. 1, reveal that the States thought that they retained significant control over selection of candidates. The debate in the North Carolina ratifying convention, for example, underscores the fear that Congress would exercise its Section 4 power to override state election laws. 2 *Debate* 854-60. Several states, including Massachusetts, New Hampshire, Maryland, and North Carolina, proposed amendments limiting Congress's power to override state election laws. 2 *id.* 548, 551, 554, 573. Proponents of the Constitution assured those who objected to Section 4 that Congress would not deprive States of control absent insurrection or failure to send a representative to Congress. 1 *id.* 428-29; 2 *id.* 751. Ironically, one detractor believed that Congress would pass laws enabling them to "hold their seats as long as they live, and there is no authority to dispossess them." 2 *id.* 813.

[11] Va. Act of Nov. 20, 1788, ch. 2, § II. Virginia's eligibility requirements for congressional candidates certainly were not unknown to the Framers. In the election of 1789, James Madison defeated James Monroe in one of Virginia's ten congressional districts. There is no indication that Madison objected to Virginia's presumed authority to impose its own restrictions on candidates for Congress.

Massachusetts, and North Carolina required a Representative to reside in his district.[12] New Jersey adopted a nominating process as a prerequisite for office.[13] Pennsylvania imposed a rotation requirement on its delegates to Congress in the first federal elections, held in 1788.[14] Furthermore, States were free to elect representatives on either a statewide or district basis until 1842, when Congress, first exercising its Elections Clause power, required House elections to be held by district, not at-large. 5 Stat. 491 (codified at 2 U.S.C. § 2(c) (1988)); *The Ku-Klux Cases (Ex parte Yarbrough)*, 110 U.S. 651, 660-61 (1884).[15] Those restrictions were consistent with

[12] Ga. Act of Jan. 23, 1789, p. 247; Md. Act of Dec. 22, 1788, ch. 10 § VII; Mass. Res. of Nov. 19, 1788, ch. 49; N.C. Act of Dec. 16, 1789, ch. 1, § I. Tennessee was admitted to the union in 1796, and it, too, had a district residency requirement. Tenn. Act of Aug. 3, 1796, ch. 1, § 2.

[13] N.J. Act of Nov. 21, 1788, ch. 241, § 3.

[14] Pa. Const. of 1776, § 11, *reprinted in* 5 *Federal and State Constitutions* 3085 (Francis N. Thorpe ed. 1909) (reprinted 1993) (hereinafter *Thorpe*); see also 1 *The Documentary History of the First Federal Elections, 1788-1790* (Gordon DenBoer and Merrill Jensen eds. 1984) 229-30 (hereafter Documentary History). Pennsylvania deleted that requirement for its elected officials in the 1790 state constitution, but the State believed that its original rotation provision did not violate Article I.

[15] Unlike the Arkansas Supreme Court, the Framers were not troubled by disuniformity in how the States chose Representatives. James Madison believed that the States had the power to elect representatives by district or at-large, and that that freedom was valuable. In an October 1788 letter to Thomas Jefferson written immediately before the first elections to Congress under the new Constitution, Madison commented that some States would elect Representatives at large while others, including Virginia, would create congressional districts. Nothing in Madison's letter even suggests that the Qualifications Clauses controlled the "various modes" adopted by the States for electing candidates to the House. Madison told Jefferson: "A law has passed [in Pennsylvania] providing for the election of members for the House of Representatives and of Electors of the President. The act proposes that every citizen throughout the state shall vote for the whole number of members allotted to the state. This mode of election will confine the choice to characters of general notoriety, and so far be favorable to merit. It is however liable to some popular objections urged

Thomas Jefferson's belief that the States retained power to establish additional qualifications. Jefferson wrote that Article I imposed "some" disqualifications, "[b]ut it does not declare, itself, that the member shall not be a lunatic, a pauper, a convict of treason, of murder, of felony, or other infamous crime, or a non-resident of his district; nor does it prohibit to the State the power of declaring these or any other disqualifications which its particular circumstances call for; and these may be different in different States. Of course, then, by the tenth amendment, the power is reserved to the States." 2 *The Founders' Constitution* 81 (Philip Kurland & Ralph Lerner eds. 1987) (quoting 11 *The Works of Thomas Jefferson* 380 (P. Ford ed. 1905)).[16]

The States have carried forward such regulations to the present. Some states require that candidates for Congress

against the tendency of the new system. In Virginia, I am inclined to think the state will be divided into as many districts as there are to be members. In other states, as in Connecticut, the Pennsylvania example will probably be followed; and in others again a middle course be taken * * *. *It is perhaps to be desired that various modes should be tried, as by that means only the best mode can be ascertained.*" 1 *Documentary History* 303 (emphasis added).

After passage of the 1842 law, four States—Georgia, Mississippi, Missouri, and New Hampshire—still elected Representatives on an at-large basis. The 28th Congress seated the delegates, nonetheless, even though their States had willfully violated the 1842 law. Chester H. Rowell, *A Historical and Legal Digest of All the Contested Election Cases in the House of Representatives of the United States, 1789-1901*, at 117-20 (1901).

[16] State legislatures exercised direct control over Senators by electing them, and indirect control through the historic process of "instruction," *viz.*, informing them how to vote on issues. Instruction served as a mechanism by which the state legislatures informed their Senators (and to some, like John Randolph of Virginia, Repsentatives too) how to vote on issues. This practice was widespread in the colonial and revolutionary periods. William E. Dodd, *The Principle of Instructing United States Senators*, 1 South Atlantic Q. 326 (Jan.-Oct. 1902); James K. Coyne & John H. Fund, *Cleaning House* 179-80 (1992); 2 George S. Haynes, *The Senate of the United States* 1025-34 (1960); Roy Swanstrom, *The United States Senate 1787-1801*, S. Doc. No. 100-31, 100th Cong., 1st Sess. 159-72 (1988).

qualify as "electors," *i.e.*, voters.[17] Many States require that electors must be state residents (although the length of the residency period varies).[18] States require candidates to submit petitions with a specific number or percent of signatures by local registered voters in order to appear on the ballot.[19] Some States require congressional candidates in primary elections to show allegiance to (or independence from) a political party.[20] Other States prohibit candidates from running in the general election if they have lost in a primary.[21] And many States forbid candidates for Congress from holding state office or seats on state courts or from running for two seats concurrently.[22] According to a compilation prepared by the Fed-

[17] *E.g.*, Ill. Ann. Stat. Ch. 5, Para. 7-10 (1993); Iowa Code Ann. § 43.18 (West 1991); Mo. Ann. Stat. § 115,349 (1993); N.C. Const. art. VI § 6, R.I. Const. art. 3, § 1. But cf. *Danielson* v. *Fitzsimmons*, 232 Minn. 149, 44 N.W.2d 484 (1950) (convicted felon can qualify for federal office notwithstanding state constitutional provision to the contrary).

[18] *E.g.*, Del. Code Ann. tit. 15, § 4101 (1981); Idaho Code § 34-604 (Supp. 1991); Minn. Stat. Ann. § 204B.06(c) (Supp. 1990-1991); N.H. Rev. Stat. Ann. § 655:2 (1986); Va. Code Ann. § 5 (Michie 1985).

[19] *E.g.*, Ala. Code § 17-7-1(a)(3) (Supp. 1993); Cal. Elec. Code §§ 6831 & 6838 (West Supp. 1993); Fla. Stat. Ann. § 99.096 (1982); Iowa Code Ann. § 43.20 (West Supp. 1992); Ky. Rev. Stat. Ann. § 118.315(2) (1993); N.Y. Elec. Law § 6-142 (McKinney Supp. 1993).

[20] *E.g.*, Colo. Rev. Stat. § 1-4-601(4) (Supp. 1993); Del. Code Ann. tit. 15, § 3002(b) (Supp. 1990); Haw. Rev. Stat. § 12-3 (Supp. 1991); Iowa Code Ann. §§ 43.18 & 49.39 (West 1991); Mich. Comp. Laws Ann. § 6.1692-1693 (1993); N.C. Gen. Stat. § 163-106 (1991).

[21] *E.g.*, 6A Ark. Code Ann. § 7-7-103(f) (Michie Supp. 1993); Colo. Rev. Stat. § 1-4-105 (Supp. 1993); Ill. Stat., ch. 10, § 5/10-2 (1993); Kan. Stat. Ann. §§ 25-205, 25-202(c) (Supp. 1992); Md. Code Ann. Elec. § 8-2 (Supp. 1991); Neb. Rev. Stat. § 32-516 (1993); N.H. Rev. Stat. Ann. § 659:91-a (Supp. 1992); N.D. Cent. Code § 16.1-13-06 (1992); S.C. Code Ann. § 7-11-210 (Supp. 1992); Tenn. Code § 2-5-101(f) (1993).

[22] *E.g.*, Alaska Const. art. IV, § 14; Ariz. Rev. Stat. Ann. § 38-296(A) (Supp. 1990-1991); La. Rev. Stat. Ann. tit. 18, § 453A (Supp. 1993); Me. Rev. Stat. Ann. tit. 21-A, § 351 (1993).

eral Election Commission, state laws governing congressional elections "are enormously complex. They vary, for example, by state, by type of election, by type of federal office, by type of party or candidate, and by type of criteria and procedure."[23]

Arkansas also regulates the election of its delegation to Congress. State law defines the boundaries of congressional districts, and redistricting is done, in the first instance, by the state legislature. 6A Ark. Code Ann. §§ 7-1-101 to 7-2-105 (Michie 1993). Candidates for Congress must possess the qualifications of registered voters as defined by state law, which means that felons and the mentally incompetent cannot run for federal office. Ark. Const. Art. 19, § 3; *id.* Amend. 51, § 11(4). Anyone defeated in a party primary cannot run as an independent candidate at the general election. 6A Ark. Code Ann. § 7-7-103(f) (Michie 1993).[24] No one appointed

[23] 2 Federal Election Comm'n, *Ballot Access: For Congressional Candidates* (1988); see also *Senate Election Law Guidebook* 1992, S. Doc. No. 15, 102d Cong., 2d Sess. (1992). Moreover, no one suggests that redistricting and reapportionment by states, for example, violates the Qualifications Clauses, yet this is a broad power through which states determine the selection of their representatives.

[24] There are two methods for a candidate to have his or her name printed on the ballot in Arkansas: by party nomination or as an independent candidate. A candidate seeking party nomination for Congress must pay the filing fee; retain a receipt for fee paid; and at party headquarters complete an affidavit of eligibility, a party loyalty pledge (if one is required), and any necessary party requirements. The state party then issues an acknowledgement that the candidate has completed all party requirements. A congressional candidate also must file various Federal Election Commission forms. 6A Ark. Code Ann. § 7-7-301 (Michie 1993). The candidate must file a receipt, the state party acknowledgement, and a political practice pledge with the Secretary of State. *Id.* § 7-7-301(c) and § 7-6-102(a)(1). For an independent candidate to have his or her name printed on the ballot for United States Senator, the candidate must file petitions signed by not less than 3% of the qualified state electors or containing 10,000 signatures, whichever is less. For a House race, an independent candidate must file petitions signed by not less than 3% of the qualified electors in the congressional district, or with no more than 2,000 signatures. Each elector signing the

by the Governor to fill a Senate vacancy is eligible to succeed himself; spouses and relatives within the fourth degree of consanguinity or affinity to the Governor also cannot be appointed to fill Senate vacancies. Ark. Const. Amend. 29, § 2 (1983). Those laws regulate the procedure and substance of federal elections.[25]

B. Term Limits And Ballot Access Restrictions Are Reasonable Regulations Of The Electoral Process

1. The Founding Fathers envisioned that elected officials would serve in the image of the Roman hero Cincinnatus, who left his plow to raise an army, defended Rome, and once again became a common citizen. The Framers envisioned Congress as consisting of "citizen legislators," in Roger Sherman's words, who would "return home and mix with the people," rather than remaining in office perpetually. James K. Coyne & John H. Fund, *Cleaning House* 112 (1992). Indeed, the members of the Constitu-

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petition must be a registered voter. The petitions can be circulated for signatures not earlier than 60 days before the deadline for filing petitions to qualify as an independent candidate (the date of the deadline for filing political practices pledges and party pledges, or May 1, whichever is later). Anyone defeated in a party primary cannot run as an independent candidate in the general election for the office for which he or she was defeated in the primary. The signature petitions are verified by the Secretary of State's office and if there is a sufficient number of qualified signatures, the Secretary of State will certify the independent candidate's name to be printed on the ballot. *Id.* § 7-7-103(c).

[25] The ruling below could prevent Arkansas from enforcing those other laws. In fact, a lawsuit seeking such relief already has been filed in state court. *Hamilton* v. *McCuen*, No. 94-1475 (Pulaski Cnty. Chancery Ct. filed Mar. 11, 1994). That argument—that a myriad of state election laws are called into question by the Arkansas Supreme Court's ruling—was foreshadowed more than 100 years ago in Congress. In a 19th century contested election in Congress, the case of *Woods* v. *Peters*, Representative Bennett authored a minority report of the House Committee on Elections which catalogued the then-known state election laws that would be called into question if the Qualifications Clauses were deemed exclusive. William H. Mobley, *Digest of Contested Election Cases Arising in the Forty-Eighth, Forty-Ninth, and Fiftieth Congresses* 88-99 (1889) (Report of Mr. Bennett); App. C, *infra*.

tional Convention selected two-year terms for Representatives in order to allow them ample time to master the duties of their offices, yet prevent them from losing what James Madison called "an intimate sympathy with the people." *The Federalist* No. 52, at 327.

During the 18th and 19th centuries, voluntary rotation of office was a common tradition. Officials ordinarily served no more than two terms in the House and one in the Senate; during the Civil War era, less than 2% of Representatives served for more than 12 years. One-third of incumbents would not seek re-election, and turnover in an average election was 40-50% of Congress. American Enterprise Inst., *Limiting Presidential and Congressional Terms* 8 (1979) (*AEI*); James K. Coyne & John H. Fund, *supra*, at 88, 112-13; Mark P. Petracca, *The Poison of Professional Politics*, Policy Analysis, No. 151, at 4 (Cato Inst. May 10, 1991); Sula P. Richardson, *Congressional Tenure: A Review of Efforts to Limit House and Senate Service* 4-5 (CRS Report Sept. 13, 1989).

This century has witnessed a dramatic surge in the number of long-term incumbents. Over the past 60 years, no fewer than 79% of incumbent Representatives seeking reelection have been successful. In only two of those elections, 1938 and 1948, was the incumbents' re-election rate below 80%. In the past three congressional elections, 98%, 96%, and 88% of the incumbents in the House of Representatives who sought re-election won. Moreover, at least 90% of all incumbents seeking re-election were retained in every congressional election from 1974 to 1990.[26] As the result, over time the number of members

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[26] See, *e.g.*, James K. Coyne & John H. Fund, *supra*, at 46; George F. Will, *Restoration* 77 (1992); Robert C. DeCarli, Note, *The Constitutionality of State-Enacted Term Limits Under the Qualifications Clauses*, 71 Tex. L. Rev. 865, 866 n.7 (1993); Troy A. Eid & Jim Koble, *The New Anti-Federalism: The Constitutionality of State-Imposed Limits on Congressional Terms of Office*, 69 Denv. U. L. Rev. 1, 3 (1992). 93% of Representatives with 20 or more years of service and 95% of those with 30 or more years of service were elected after 1900. Sula P. Richardson, *supra*, at 5 n.14.

spending 12 or more years in the House of Representatives has jumped from less than 20 at the turn of the century to nearly 200 today, and nearly half of the Senators now remain in office for 12 or more years.[27] See App. I, *infra*. In fact, some observers have concluded that, as a practical matter, incumbents are likely to be unseated only by reapportionment or scandal.[28]

Arkansas typifies that scenario. Not until 1878, 40 years after statehood, did an Arkansas Representative serve more than three terms. Before the Civil War, 41% of incumbent Representatives did not seek re-election. By contrast, from 1944 to 1966 Arkansas had the same four Representatives. From 1967 to 1992, only 15% of House incumbents did not seek re-election, and during that period 88% of all incumbents seeking re-election were returned to office. From 1942 to 1974, Arkansas had the same two senators. Since the direct election of Senators began, incumbents have won 20 of 22 primaries (91%); no incumbent has ever lost a general election; and in four of 22 races incumbents ran unopposed in the primary and general elections.[29]

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[27] George F. Will, *supra*, at 73-89. Commentators have also criticized related developments: Legislative staffs grew from 4,000 to 37,000 in the last 30 years, and have increased fourfold between 1960 and 1980. In April 1991, there were 37,388 staff in Congress. The number of registered lobbyists doubled between 1975 and 1985. In 1976, there were 1,146 registered political action committees that contributed $22.6 million to House and Senate candidates; a decade later there were 4,211 registered PACs that contributed $139.4 million to House and Senate candidates. James K. Coyne, *Term Limitation: Bringing Change, Competition, Control and Challengers to Congress* 3 (Apr. 19, 1991); Mark P. Petracca, *supra*, at 3. Virtually all PAC contributions go to incumbents. Illustrative charts are in App. I, *infra*.

[28] Sula P. Richardson, *Congressional Tenure: A Review of Efforts to Limit House and Senate Service* 4-5 (CRS Report Sept. 13, 1989); see James K. Coyne & John H. Fund, *supra*, at 117.

[29] The above Arkansas statistics can be found in the records of the Office of the Arkansas Secretary of State and in *Biographical Directory of the United States Congress, 1774-1989* (U.S. Gov't Printing Office 1989).

The upshot is this: The Framers' ideal of "citizen-legislators"—individuals temporarily serving the nation in government before returning to private life—has been eclipsed by the cynical (and corrosive) belief that elected officials often are simply entrenched career politicians more interested in permanently maintaining their sinecures than in representing the people. To remedy that problem, numerous States already have adopted or are considering resuse of an historical electoral practice to enhance rotation in office.

2. Term limits have an ancient pedigree.[30] Term limits were widespread during the colonial and revolutionary periods. For example, the Constitution of Virginia of 1776 expressly endorsed rotation as a valuable principle.[31] The Pennsylvania Constitution of 1776 set a four-year limit on the legislature. Ten of the 13 new States imposed term limits upon their state executives, legislators, or delegates to Congress. App. B, *infra*. The Articles of Confederation established a unicameral legislature with delegates appointed annually by state legislatures. Arts. of Confederation Art. V. The delegates to the First and Second Continental Congresses were chosen without any term of office; they could serve only three years in a six-year period; and they could be recalled at any time. The limitation sought to prevent officeholders from becoming "a perpetual 'ruling class' of legislators who might thus

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[30] The principle that term limits promote valuable rotation in office traces its lineage to Athens and Rome. James K. Coyne & John H. Fund, *supra*, at 110.

[31] Section 5 provided that "the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct." Va. Const. of 1776, pt. 1, § 5, *reprinted in* 7 Thorpe 3812, 3813.

become unresponsive to their constituents' needs." Sula P. Richardson, *supra*, at 2; Charles O. Jones, *Every Second Year* 2-3 (1967); James K. Coyne & John H. Fund, *supra*, at 111.

The Virginia Plan for a new Constitution, drafted by James Madison and introduced by Edmund Randolph of Virginia, initially provided that members of the House and Senate would be "incapable of reelection" for an unspecified period of time "after the expiration of their terms of service." 1 *Records of the Federal Convention of 1787*, at 20 (M. Farrand ed. 1987) (hereafter *Farrand*). Nonetheless, the Constitutional Convention of 1787 principally debated the length of terms for the House and Senate, rather than the length of service for individual officeholders. Although there is no recorded debate on the issue, the Committee of the Whole decided against including term limits because they "enter[ed] too much into detail for general propositions." 1 *id.* at 50-51. Some parties criticized the Constitution for not requiring rotation, but supporters defended the absence of term limits on the ground that the specified terms of office and the need for Representatives to be re-elected biennially ensured turnover. See, *e.g.*, 1 *The Debate on the Constitution* 111, 325-26, 367-68, 401-02 (Bernard Bailyn ed. 1993); 2 *id.* 891-93, 902.

Similar mandatory rotation proposals were advanced shortly after the First Congress convened. None, however, became law.[32] Although the principle of rotation in office never lost currency, the idea of imposing legal term limits on Members of Congress fell into desuetude for the

[32] On August 18, 1789, South Carolina Representative Thomas Tucker introduced proposals to limit service in the House and the Senate. 1 *Annals of Congress* 762 (Joseph Gales ed. 1789). One proposal would have limited a Representative to six successive years in an eight-year period. The other one would have limited a Senator's term to one year, with a cap of five consecutive years of service during a six-year period. The House did not vote on either proposal. Sula P. Richardson, *supra*, at 4.

ensuing 150 years, perhaps due to the precedent set by Washington and Jefferson of serving only two terms as President and the high rates of voluntary legislative rotation seen in that era. Mark P. Petracca, *supra*, at 14; Sula P. Richardson, *supra*, at 4-6.[33]

The same period witnessed a two-fold increase in the average tenure of House service, from four to eight years, as a number of interrelated factors made longer congressional service more attractive. Congress established standing committees. The congressional seniority system, which evolved by internal customs and political party rules, determined which members sat on and chaired committees, thereby enhancing the value of longevity in office. Lengthy tenure replaced expertise as the source of congressional influence. The federal government gradually assumed an increasingly powerful role in setting policy for the nation. Together, those factors eventually helped give rise to career congressmen. Sula P. Richardson, *supra*, at 5. And that development has been characterized as perhaps the most significant event in modern-day politics. See, *e.g.*, George F. Will, *Restoration* (1992).

Recent history shows that officials are unlikely voluntarily to relinquish office unless it is to seek another position. Members of Congress have developed an institutional interest in prolonging their own tenure. Also, it is no answer that voters can select other representatives. The seniority system bestows considerable benefits on senior incumbents, so it is unreasonable to expect individual voters to handicap themselves by turning out their own officials without some expectation that every other group vieing for its share of the public fisc will occupy the same

[33] Only once has there been a recorded vote in Congress on term limits for the House or Senate. During the debate on the Twenty-Sixth Amendment, which limited the President to two full terms, Senator O'Daniel offered an amendment that would have limited Members of Congress to six years in office. The Senate defeated the amendent 82-1, with only Senator O'Daniel voting in its favor. 93 Cong. Rec. 1962-63 (1947).

position. To be sure, while no State can force another to limit the terms of its officials, each State can ensure that its entire electorate is in the same position and can add to the number of States limiting Members' terms, thereby hoping over time incrementally to encourage Congress to equalize the conditions among the States by proposing a constitutional amendment under Article V or by passing legislation under Article I limiting Members' terms. Kris W. Kobach, Note, *Rethinking Article V: Term Limits and the Seventeenth and Nineteenth Amendments*, 103 Yale L.J. 1971 (1994). Accordingly, just as the courts were the only agency in an institutional position to effect a rational constitutional solution to the problem of malapportionment, Thomas I. Emerson, *Malapportionment and Judicial Power*, 72 Yale L.J. 64, 79-80 (1962), so, too, term limits (or ballot access laws) are the only (or at least the most direct) institutional means of effecting a rational solution to the problem of entrenched incumbency.

The resurgent interest in rotation for federal officeholders fits into a settled fabric of state law imposing similar requirements on their state officers. Twenty States limit the terms of the governor or other executive officials. App. D, *infra*. Fourteen additional States (including Arkansas) impose term limits on the governor (and other executive officials) and legislators. Apps. E-F, *infra*. Only 12 States do not limit the terms or ballot access of officeholders in some manner. App. G, *infra*. Finally, more than 200 municipalities have term limits or incumbency-based ballot access restrictions for local officials. App. H, *infra*.

The States have not limited such reforms to their own offices. To remedy actual and perceived ills resulting from contemporary incumbency rates, Arkansas and 14 other States have established term limits or ballot access restrictions for federal elective office.[34] As a result, 153 Repre-

[34] See Ariz. Const. art. VII, § 18; Cal. Elec. Code § 25003 (Deering 1993); Colo. Const. art. XVIII, § 9a; Fla. Const. art. 6, § 4; Mich. Const. art. II, § 10; Mo. Const. art. III § 45(a); Mont. Const. art. IV, 8; N.D. Cent. Code § 16.1-01-13.1 (1992); Ohio Const. art. V, § 8; Ore. Const. art. II, § 20; S.D. Const. art. III, § 32; Wash. Rev. Code § 29.68.015-.016 (West 1992); Wyo. Stat. § 22-5-104 (1992). The Nebraska law, Neb. Const. art. XV, § 20, was recently held invalid on state law grounds due to a defect in the initiative process. *Duggan* v. *Beermann*, 515 N.W.2d 788 (Neb. 1994). A district court held the Washington law unconstitutional on February 10, 1994. *Thorsted* v. *Gregoire*, 841 F. Supp. 1068 (W. D. Wash. 1994), appeals pending *sub nom. Thorsted* v. *Munro*, Nos. 94-35222 et al. (9th Cir.).

sentatives and 28 Senators are today subject to such laws, and other States are considering whether to adopt such measures. Present indications are that term limits and ballot access initiatives may appear on the ballot in a number of States this or next year.[35]

Historic figures in American politics have endorsed the principle that frequent turnover of elected officials is a healthy feature of a vibrant democratic republic. John Adams, delegate to the Constitutional Convention, believed that rotation would "teach" men "the great political virtues of humility, patience, and moderation without which every man in power becomes a ravenous beast of prey." George F. Will, *supra*, at 110. Elbridge Gerry thought that " '[r]otation keeps the mind of man in equilibria [*sic*] and teaches him the feelings of the governed' and counters 'the overbearing insolence of office.' " *Id.* George Mason and Andrew Jackson believed in the value of rotation. Thomas Jefferson was critical of the fact that the Constitution did not limit congressional terms.[36] Presidents Abraham Lincoln, Harry Truman, Dwight Eisenhower, John Kennedy, and George Bush favored term limits. James K.

[35] A NEXIS search indicated that the following states are considering new or additional term limits proposals: Alaska, Idaho, Illinois, Massachusetts, Maine, Nebraska, Oklahoma, Nevada, and Utah.

[36] Jefferson wrote Madison that "[t]he second feature I dislike, and greatly dislike, is the abandonment in every instance, of the necessity of rotation in office. . . ." Thomas Jefferson, Letter from Jefferson to Madison (Dec. 20, 1787), *reprinted in* 1 *Debate* 211.

Coyne & John H. Fund, *supra,* at 113, 159-64; James C. Otteson, 41 DePaul L. Rev. at 22-23; Mark P. Petracca, *supra,* at 21; Sula P. Richardson, *supra,* at 8-9.

3. Term limits further democratic principles in several ways: Their principal purpose is to help offset what are often described as the nearly insurmountable advantages of incumbency. Incumbents typically raise more funds than challengers, and incumbents can carry over unspent campaign funds from one election to the next. Incumbents have use of the franking privilege to distribute mass mailings, easier access to media coverage, as well as greater name recognition and visibility, particularly given the use of televised hearings and floor speeches. A member's televised hearings or floor speeches ideally provide already-produced television sound bites, while challengers must expend considerable sums for comparable ads. Long-term incumbents enjoy seniority, which enables them to bestow favors on constituents or local interest groups at public expense. Term limits are designed to "even out the playing field" and promote frequent rotation of elected officials in order to ensure that they are representative of, and responsive to, the public. See, *e.g.*, George F. Will, *supra,* at 146-212; Mark P. Petracca, *supra,* at 15-20; James K. Coyne & John H. Fund, *supra,* at 113; Sula P. Richardson, *supra,* at 11-12; *Buckley* v. *Valeo,* 424 U.S. 1, 31 n.33 (1976); App. I, *infra.*

But term limits have been adopted for other reasons, too. Advocates of term limits believe that, by increasing turnover, term limits will increase the racial, gender, and career diversity of Members of Congress; that, by promoting a continuous influx of new Members, term limits will induce citizens to run for political office without committing themselves to a political career; that, by eliminating the possibility of becoming a career legislator, term limits will prompt Members to exercise their independent judgment in the public interest and reduce the time spent on fundraising, self-promotion, and "pork barrel" legislation; that, by preventing congressmen from developing

long-term relationships with the permanent bureaucracy, term limits will enhance skepticism and oversight of administrative programs; that, by substantially increasing the number of competitive congressional races, term limits are likely to increase voting rates; that, by "breaking up the 'ruling class' mentality that accompanies lifetime tenure in office," term limits more directly and precisely focus on problems of modern government than, say, spending limits or public campaign financing; that, by forcing political parties to seek new candidates, term limits will invigorate the role of political parties, rather than individual politicians; and that over time term limits will help purge the cynicism toward Congress plaguing today's electorate. In sum, as a remedy for the "depressing combination of legislative insularity, voter apathy, and special interest influence," Linda Cohen & Matthew Spitzer, *Term Limits,* 80 Geo. L.J. 477, 479 (1992) (footnote omitted), term limits are seen by the States that have adopted them as a necessary medicament to restore a healthy democracy. See, *e.g.*, Ark. Const. Amend. 73 Preamble, *quoted at* pp. 3, 4a; George F. Will, *supra,* at 176-83, 212; *AEI* 21-22; James K. Coyne & John H. Fund, *supra,* at 117-40; James C. Otteson, *A Constitutional Analysis of Congressional Term Limits: Improving Representative Legislation Under the Constitution,* 41 DePaul L. Rev. 1, 13-18, 26-32 (1991).

II. STATES CAN RESTRICT ACCESS TO THE BALLOT FOR THE OFFICES OF REPRESENTATIVE AND SENATOR

A. States Have The Authority Under The Elections Clause And The Tenth Amendment To Impose Ballot Access Restrictions For The Offices Of Representative And Senator

The Constitution expressly provides that States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." Art I, § 4, Cl. 1. This Court often has upheld the States' exercise of that authority as long as they do not rely on an arbitrary factor, effectively confer a monopoly on the two major

parties, or freeze the political status quo. See, *e.g.*, *Burdick*, 112 S. Ct. at 2063-68. As a practical matter if elections are to be orderly, fair, and honest, rather than chaotic and biased, some regulation is essential. *Id.*

Every electoral regulation invariably imposes some burden on voters and candidates. Filing deadlines, party nomination or petition signature requirements, redistricting, etc., prevent some voters from electing the candidates of their choice in the interest of ensuring that elections are conducted responsibly and efficiently. The Framers evidently were willing to tolerate that effect, however, since they empowered the States to hold federal elections. The Court has recognized a need to accommodate the Elections and Qualifications Clauses, since *Storer* upheld a state regulation of federal elections despite its exclusionary effect. 415 U.S. at 728-37, 746 n.16. The issue, then, is how to distinguish a "regulation" from a "qualification."

The principal distinction between the two terms is that a "qualification," unlike a "regulation," is a prerequisite for (in this case) holding office. Then-contemporary dictionaries used that concept to define a "qualification." [37]

[37] See, *e.g.*, *American Dictionary of English Language* (1828) ("Any natural endowment or any acquirement which fits a person for a place, office or employment * * *; Legal power or requisite; as the *qualifications* of electors"); *Oxford English Dictionary* (1971) (definition from 1669) ("A quality, accomplishment, etc., which qualifies or fits a person *for* some office or function. * * * * * A necessary condition, imposed by law or custom, which must be fulfilled or complied with before a certain right can be acquired or exercised, an office held, or the like"); John Ash, *The New and Complete Dictionary of the English Language* (1775) ("An accomplishment, that which makes fit; that which puts a man under the protection of the law in any office or profession"); Rev. John Davis, *Walker's Critical Pronouncing Dictionary and Expositor of the English Language* 442 (1828) ("That which makes any person or thing fit for any thing * * *"); Rev. Thomas Dyche, *A New General English Dictionary* (1777) ("something that enables or empowers a person to do that which otherwise he could not"); Samuel Johnson, *A Dictionary of the English Language* (1768) ("That which makes an person or thing fit for any thing"); William Perry, *A General Dictionary of the English Language* (1795) ("an accomplishment; capacity, fitness"); Thomas Sheridan, *A General Dictionary of the English Langage* (1784) ("that which makes an person or thing fit for any thing"); see also 2 John Bouvier, *Law Dictionary* 408 (1864) ("Having the requisite qualities for a thing; as, to be president of the United States, the candidate must possess certain qualifications.").

Blackstone understood that "qualifications of persons to be elected members of the house of commons" meant criteria that entitle someone to hold that office. 1 W. Blackstone, *Commentaries*, reprinted in 2 *The Founders' Constitution* 68-69; see also 1 Joseph Story, *Commentaries on the Constitution* §§ 612-15 (1883), *reprinted in* 2 *The Founders' Constitution* 81-82. That interpretation is also the one that the Framers must have had in mind when drafting the Electors Clause, since the States had prerequisites to vote, such as freehold requirements. Construing the term "qualification" as a "prerequisite" is consistent with the use of that term in Art. I, § 5, Cl. 1, which authorizes each Chamber to "be the Judge of the Elections, Returns, and Qualifications of its Own Members"; each House can judge whether someone has satisfied the prerequisites for office. Finally, defining a "qualification" as a prerequisite for office leaves that term judicially manageable, whereas defining that concept by reference to some degree of difficulty does not. In sum, interpreting the term "qualification" as referring to a "prerequisite for holding office" is not only a sensible construction of that term, but also ensures that it has the same meaning throughout Article I.

So viewed, the term "qualification" does not embrace ballot access laws, like Amendment 73, that allow a candidate to be elected by a write-in vote. Such laws regulate only the manner by which votes are cast to obtain a majority, rather than the conditions that a person must satisfy to be sworn into office if that person garners a majority. Moreover, ballot access laws leave nothing for either Chamber to judge, since they regulate only the process of casting votes, instead of the attributes that candidates must possess to become elected officials.

The Court's decision in *Storer* v. *Brown*, decided five years after *Powell*, supports the conclusion that ballot access laws like Amendment 73 do not violate the Qualifications Clauses. In *Storer*, the Court upheld a state law disqualifying from the ballot as an independent candidate for the House anyone who voted in the preceding primary or had been registered in a political party within one year prior to that primary. 415 U.S. at 728-37. Ineligible candidates challenged the law on the ground that their exclusion from the ballot was tantamount to imposition of an additional qualification for federal office, in violation of the Qualifications Clause. *Id.* at 727. In upholding the California law, the Court expressly rejected the candidates' Qualifications Clause challenge to the statute, holding that it no more imposed a "qualification" on federal office than a state law requiring a candidate, in order to garner a place on the ballot, to win a party primary or otherwise to establish substantial community support. *Id.* at 746 n.16. In fact, *Storer* found the argument "wholly without merit." *Id.* *Storer* thus establishes that a state law regulating a candidate's access to the ballot is not necessarily unconstitutional under the Qualifications Clauses, even if it has an exclusionary effect.

Consistent with *Storer*, three federal courts of appeals have held that a state law imposes a "qualification" for Article I purposes only if it necessarily excludes from office a person who captures the majority vote at the ballot box. The First Circuit in *Hopfmann* v. *Connolly* held that a law does not impose a "qualification" for office for purposes of Article I unless that law renders a candidate ineligible to hold office if he or she garners a majority of the votes cast in an election. 746 F.2d at 102-03. The law at issue provided that only candidates receiving 15% of the vote on a ballot at the convention could challenge the convention's endorsement in a state primary election. The court of appeals sustained that provision against a challenge based on the Qualifications Clauses. As the First Circuit explained, "the test to determine whether or not the 'restriction' amounts to a 'qualification' within the

meaning of Article I, Section 3, is whether the candidate 'could be elected if his name were written in by a sufficient number of electors.'" *Id.* at 103 (quoting *State* v. *Crane*, 197 P.2d 864, 871 (Wy. 1948)). The Ninth and Eleventh Circuits have followed that approach as well. See *Joyner* v. *Mofford*, 706 F.2d at 1531; *Public Citizen* v. *Miller*, 813 F. Supp. 821 (N.D. Ga.), aff'd on the basis of the district court opinion, 992 F.2d 1548 (11th Cir. 1993); see also *State ex rel. O'Sullivan* v. *Swanson*, 257 N.W. 255, 255-56 (Neb. 1934); *State ex rel. McCarthy* v. *Moore*, 92 N.W. 4 (Minn. 1902).

Under the foregoing decisions, ballot access measures, like Amendment 73, are a clear example of a lawful exercise of the States' Elections Clause power to regulate the "Manner" of federal elections. That Clause vests in the States the right to decide how votes are cast: by levers in booths, by punch cards, by coupons, or by whatever devices new technologies produce. James Madison made that specific point at the Convention. 2 *Farrand* 240-41. Arkansas could lawfully decide, for instance, that all ballots will be cast as write-in ballots, whether for incumbents or challengers, since a candidate has no right under the Constitution to have his or her name appear on a printed ballot. Indeed, such a claim would have been alien to the Framers. During their era, electors typically voted by voice vote, by a show of hands, by handwritten ballot, or by using an item, such as an ear of corn, to signify their choice. Ark. Const. of 1836, § 8 ("[a]ll general elections shall be viva voce until otherwise directed by law"); John L. Ferguson & J.H. Atkinson, *Historic Arkansas* 67 (1966); L.E. Fredman, *The Australian Ballot: The Story of An American Reform* 20-21 (1968); 1 Charles Seymour & Donald Paige Frary, *How the World Votes* 217-20, 246-48 (1918); *e.g.*, Albert Edward McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America* 22, 101-02, 111 (1905). Until the late 1800s, all ballots cast in this country were write-in ballots; the system of state-prepared ballots was introduced no earlier than 1888. Prior to

that time, voters composed their own ballots or used preprinted tickets prepared by political parties. L.E. Fredman, *supra*, at ix, 7-9, 20-21; 1 Charles Seymour & Donald Paige Frary, *supra*, at 250-52; *Burdick*, 112 S. Ct. at 2070 (Kennedy, J., dissenting); *Burson*, 112 S. Ct. at 1852. Since the institution of state-sponsored, preprinted ballots became commonplace, and because States restrict the number of candidates who can be listed on such ballots, it has always been the case that some citizens cannot vote for the candidate of their choice unless they exercise a write-in option. Across-the-board use of the write-in process would be a valid exercise of the States' power to regulate the manner of federal elections. The States' more selective use of that power therefore does not impose a "qualification" on federal office within the meaning of Article I.

Ballot access laws are a reasonable exercise of the States' authority under the Elections Clause. That Clause vests in the States authority "to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *Smiley*, 285 U.S. at 366. The "fundamental right involved" is the right to be governed by delegates responsible and responsive to the electorate. Entrenched incumbency threatens that right to no less a degree than electoral fraud. According to James Madison, "[t]he genius of republican liberty seems to demand on one side not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people by a short duration of their appointments[.] * * * A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men * * *." *The Federalist* No. 37, at 227. The Delegates to the Constitutional Convention believed that the benefits of rotation would be achieved by virtue of the short term served by Representatives. Although for much of our history the Framers estimate proved correct, that is no longer the case. Term limits are a reasonable attempt to achieve

the fundamental values described by Madison and others in light of present-day political realities.

To be sure, Amendment 73 does not require all candidates for federal office to stand for election as write-in candidates; only certain incumbents must seek re-election in that way, and the court below was troubled by that fact. Pet. App. 15a. But the question whether Amendment 73 impermissibly discriminates against incumbents is better viewed as raising an equal protection concern, than as imposing an additional "qualification" on federal elected office. Insofar as Amendment 73 is criticized on the ground that it unfairly excludes long-term incumbents from the ballot and burdens them with the need to run as write-in candidates while permitting the remaining candidates to appear on the ballot, the perceived vice in Amendment 73 lies not in its use of the write-in procedure per se, which itself is lawful, but in the preferential treatment afforded challengers and short-term incumbents, who are exempted from reliance on the write-in process. *That* claim raises a classic equal protection issue, which would be analyzed under the standard articulated in *Burdick* and *Anderson*, since it is the different treatment afforded the two categories of candidates (long-term incumbents vs. everyone else), not the mere use of the write-in mechanism, that would generate concern. The constitutionality of Amendment 73 should be analyzed under traditional equal protection principles, not as adding an "additional qualification" to office, as the court below held.[38]

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[38] This Court and the lower courts have consistently upheld term limit laws over First and Fourteenth Amendment claims, even without a write-in option and even if the ban lasts for a lifetime. See, *e.g.*, *State ex rel. Maloney* v. *McCartney*, 223 S.E.2d 607 (W. Va.), appeal dismissed for want of a substantial federal question, 425 U.S. 946 (1976) (upholding two-term limit for governor); *Miyazawa* v. *City of Cincinnati*, 825 F. Supp. 816, 821 (S.D. Ohio 1993) (upholding term limits for city council members); *Legislature* v. *Eu*, 816 P.2d 1309, 1327-28 (Cal. 1991) (upholding term limits for state legislators because "the interests of the state in incumbency reform outweigh any injury to incumbent office holders and those

B. Amendment 73 Is A Permissible Ballot Access Restriction

As Justice Cracraft explained in dissent below, Pet. App. 37a-39a, the ballot access restrictions imposed by Amendment 73 do not fix a "qualification" for the office of Representative or Senator under the test applied by the First, Ninth, and Eleventh Circuits, since that Amendment does not prevent a candidate who receives the majority of votes cast at the election from holding those offices. The text of the Amendment itself makes that point clear. The Amendment only restricts access to the ballot for congressional candidates, while imposing a strict term limit on state officers.

The Arkansas Supreme Court readily acknowledged that an incumbent could run for the House or Senate as a write-in candidate and that any write-in candidate receiving a majority of the votes cast at a general election would be entitled to hold office. Pet. App. 15a. The

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who would vote for them"), cert. denied, 112 S. Ct. 1292, 1293 (1992); *Maddox* v. *Fortson*, 172 S.E.2d 595, 598-99 (Ga.) (upholding term limits for state offices), cert. denied, 397 U.S. 149 (1970); *Roth* v. *Cuevas*, 158 Misc. 2d 238, 603 N.Y.S.2d 962, aff'd, 624 N.E.2d 689 (N.Y. 1993). Term limits rationally promote legitimate and compelling state interests, like the ones set forth in Amendment 73, *quoted at* pp. 3, 4a. Term limits do not offend the First Amendment since they do not regulate on the basis of political ideology or affiliation, only on the basis of incumbency, which is a politically-neutral criterion. Nor do such term limits trespass on the Fourteenth Amendment. By definition incumbents are not politically powerless and in need of special protection from the majoritarian political process, cf., *e.g.*, *San Antonio Indep. School Dist.* v. *Rodriguez*, 411 U.S. 1, 28 (1973) (indeed, the theory upon which term limits rests is that the opposite is true); the status of "incumbency" is not an immutable characteristic (at least one would hope), like race, that is entitled to heightened judicial protection, cf., *City of Cleburne* v. *Cleburne Living Center*, 473 U.S. 432, 445 (1985); and term limits do not infringe on a fundamental right, since there is no fundamental right to hold office, run as a candidate, or vote for any particular individual, see, *e.g.*, *Burdick*, 112 S. Ct. at 2063-64; *Anderson* v. *Celebrezze*, 460 U.S. 780, 786 (1983); *Clements* v. *Fashing*, 457 U.S. 957 (1982).

procedure to become a write-in candidate in Arkansas is not onerous.[39]

Nonetheless, the court below equated the practical difficulties facing a write-in candidate with a prohibition on holding office, because write-in candidates, according to the court below, have only a "glimmer of opportunity" for success. That fear is misplaced, for two reasons.

To begin with, although it is doubtless the case that ballot access restrictions may make it more difficult for some write-in candidates to win some elections, that is not always true. In fact, a write-in candidate won election to Congress from Arkansas in 1958. *Historical Report of the Arkansas Secretary of State 1986*, at 236 (Steve Faris ed. 1986). The standard applied by the First, Ninth, and Eleventh Circuits does not treat a restriction as a "qualification" unless it prohibits a candidate who is victorious at the polls from holding office *as a matter of law*. Since Amendment 73 does not have that effect, it should not be treated as a "qualification" under Article I. In addition, Arkansas election statistics show that there has been virtually no competition for federal office since World War II. See App. I, *infra*. Without Amendment 73, challengers will continue to have *less* than a "glimmer of opportunity" of success. Amendment 73 does not create a new problem; it remedies an existing one.

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[39] To appear as a write-in candidate for Congress in Arkansas, a candidate (or his agent) must notify the Secretary of State of his intention at least 60 days before the general election. 6A Ark. Code Ann. § 7-5-205 (Michie Supp. 1993). A blank line is then printed on the ballot. *Id.* § 7-7-208(h)(3). Only votes for the candidates who have notified the Secretary of State of their intention to run as a write-in will be counted. *Id.* § 7-5-205. Candidates must file a pledge that they are familiar and will comply with state election law. *Id.* § 7-6-102(a)(1)(4). A candidate must complete a background information form and supply a picture. Hence, there are but two prerequisites to run as a write-in candidate for congressional office—notification of intent to run, and the pledge—neither of which imposes a significant burden. It is more burdensome for a candidate to have his or her name appear on the printed ballot in Arkansas. P. 17 n.24, *supra*.

Amendment 73 compares favorably with the state laws upheld in *Storer* and *Burdick*. *Storer* upheld a state law excluding from the ballot as an independent candidate anyone who lost in the primary or was registered in a political party, while *Burdick* sustained a state law that altogether prohibited write-in votes. Amendment 73 imposes no greater burden on candidates and voters than the laws upheld in those cases, since it allows long-term incumbents to be re-elected through the write-in process.

III. STATES CAN IMPOSE TERM LIMITS ON THE OFFICES OF REPRESENTATIVE AND SENATOR

A. The Qualifications Clauses Do Not Prohibit The States From Imposing Qualifications For The Offices Of Representative And Senator

1. Constitutional analysis, like statutory interpretation, must begin with the text of the relevant law, and "the plain language of the enacted text is the best indicator of intent." *Nixon* v. *United States*, 113 S. Ct. 732, 737 (1993). The Qualifications Clauses provide that "[n]o Person shall be a Representative [or Senator] who shall not have attained to the Age of twenty five Years [or 30], and been seven [or nine] Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in [or from] which he shall be chosen." Art. I, § 2, Cl. 2, and § 3, Cl. 3. The Clauses do not state that they impose "uniform" or "exclusive" requirements for office. Compare Art. I, § 8, Cl. 1 (requiring "Duties, Imports and Excises" to be "uniform throughout the United States"), Cl. 4 (authorizing Congress to establish "uniform" naturalization and bankruptcy laws), Cl. 17 (authorizing Congress to exercise "exclusive" power over the District of Columbia). The Clauses also are written as a prohibition, *viz.*, as disqualifications from office. In other words, rather than declare that all persons satisfying those qualifications are eligible for congressional office, the Qualifications Clauses are more naturally read to disqualify anyone who fails the three defined criteria. The Clauses define a floor, or minimum qualifications that an

official must possess, thereby allowing States to add additional ones.

The court below read the Qualifications Clauses as being exclusive in order to ensure that they impose uniform requirements nationwide. That approach is mistaken. The Qualifications Clauses also refer to citizenship and inhabitancy, yet, in 1790 those concepts were defined by state law. The definition of citizenship was not uniform throughout the new nation, and there was no constitutional definition of citizenship until the Fourteenth Amendment was ratified in 1868. The definition of inhabitancy depended on state law (and does still), particularly on the issue of what length and type of absence from the State constituted a forfeiture of residency. Accordingly, because the States had the power to define the concepts of citizenship and inhabitancy for purposes of the Qualifications Clauses, it is dubious that the Clauses impose uniformity on the States in every other regard, thereby ousting them of their historic power to set qualifications for elected office. Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. Pitt. L. Rev. 97, 117-19 (1991).[40]

Related provisions of the Constitution also show that the Qualifications Clauses do not define exclusive qualifications for Representative and Senator. The Impeachment Clause, Art. I, § 3, Cl. 7, authorizes disqualification from federal office of any person convicted after being impeached. The Incompatibility Clause, Art. I, § 6, Cl. 2, bars anyone from simultaneously holding office

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[40] The first recorded contested election case in Congress, *Ramsey* v. *Smith*, involved the issue whether a member sent from South Carolina qualified as an inhabitant of that State and a citizen of the United States. M. St. Clair Clarke and David A. Hall, *Cases of Contested Elections in Congress* 23-37 (1834) (hereafter "Contested Elections"). In 1789, the Committee of Elections determined that both questions were to be resolved by the law of South Carolina: "I take it to be a clear point, that we are to be guided, in our decision, by the laws and constitution of South Carolina, so far as they can guide us * * *." *Id.* at 32 (speech of Mr. Madison).

in the Legislative and Executive Branches. The Oath or Affirmation Clause, Art. VI, Cl. 3, requires Congressmen to take an oath or to affirm to support the Constitution, while the companion Religious Test Clause prohibits the federal and state governments from imposing a religious test as a qualification for federal office, thereby indicating that such a test otherwise could have been imposed. Finally, Section 3 of the Fourteenth Amendment disqualified anyone who fought on behalf of the Confederacy during the Civil War. Taken together, these provisions show that the Qualifications Clauses do not fix the exclusive prerequisites for Congress and that other relevant sections of the Constitution must be considered. The Elections Clause and Tenth Amendment are such provisions, and they support the constitutionality of ballot access laws, like Amendment 73.

The conclusion that the Qualifications Clause do not bar the States from adding requirements to hold office is supported by the text of Art. I, § 10, Cls. 1-3. Those sections declare that "[n]o State shall" undertake certain actions, such as "enter into any Treaty, Alliance, or Confederation," "coin Money," "grant any Title of Nobility," or enact specific types of laws, such as "any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts." Those clauses show that the Framers knew how to impose an express prohibition on the States but chose not to do so in the Qualifications Clauses. A State's imposition of qualifications on Representatives and Senators thus is consistent with the overall structure of Article I.[41]

[41] For that reason, we disagree with the conclusion held by Justice Joseph Story, Professor Charles Warren, and Judge Thomas Cooley. 1 Joseph Story, *supra*, § 624, *reprinted in* 2 *The Founders' Constitution* 243; Charles Warren, *The Making of the Constitution* 420-22 & n.1 (1937); Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 331 (1931). They invoke the "expressio unius, exclusio alterius" rule of construction, *viz.*, that by specifying certain prerequisites, the Qualifications Clauses necessarily exclude all others. That rule of construction must give way, however, when there is strong evidence to the contrary, as there is in this case.

The Tenth Amendment is also relevant, because it reserves to "the States" or "the people" all powers not granted to the national government nor prohibited to the States elsewhere in the Constitution. At worst, the text of the Constitution is silent or ambiguous with regard to the question presented by this case. The Constitution does not expressly vest authority in the national government to impose additional qualifications for the House and the Senate, nor does it expressly prohibit the States from doing so. Under these circumstances, the Tenth Amendment offers a valuable interpretive guide, because it instructs the courts to resolve doubts about the legality of laws like Amendment 73 in favor of "reserving" to the States or the people the "power[]" to regulate the electoral process within each State. See generally Amicus Br. of Washington Legal Foundation; Amicus Br. of Nebraska *et al.*

It is no objection to Amendment 73 that its purpose is to limit the tenure of Representatives and Senators. The Qualifications Clauses do not contain an element of intent akin to the one that is applied under the Equal Protection Clause, see *Washington* v. *Davis*, 426 U.S. 229 (1976); *Personnel Adm'r* v. *Feeney*, 442 U.S. 256 (1979), because the two Clauses serve wholly different purposes. Public financing of challengers' campaigns would not be unconstitutional under the Qualifications Clauses even if its purpose was to unseat incumbents, because a law underwriting the cost of a campaign excludes no one from the ballot, let alone from office. Accordingly, while it is true that a purpose and hoped-for effect of Amendment 73 is to increase rotation in office, that intent is immaterial to its constitutionality.

There is no need to read the Qualifications Clauses as exclusive in order to protect the integrity of the federal system. The Constitution preserved the States' power "to determine the qualifications of their most important government officials," *Gregory*, 111 S. Ct. at 2402, since that authority posed no threat to the national government or any other State. A State that sets term limits for its

Representatives and Senators imposes no burden on the federal government's ability to exercise its delegated powers. In addition, since the Constitution reserved to the States the greater power to set voting qualifications for federal officers, it is illogical to conclude that the States' exercise of the lesser power to set qualifications to hold such offices threatens the federal government in some way. In any event, Congress has the power under the Elections Clause to supersede laws enacted by the States, so that the federal government is fully able to impose a uniform rule should it decide to do so. Cf. *Roudebush* v. *Hartke*, 405 U.S. 15 (1972). Also, one State's decision to retire its long-term incumbents forces no other State to pursue that course. Thus, contrary to the Arkansas Supreme Court's belief, there is no need to construe the Qualifications Clauses as mandating uniformity in order to safeguard the interests of the national government or other States.

Interpreting the Constitution as reserving to the States the power to impose additional qualifications for federal office also sensibly allocates power in our federal system. For example, Arkansas and other States deny felons and the mentally incompetent the right to vote for or hold state office and deny felons the right to vote in federal elections. Pp. 9-10 n.5, *supra*. It would be anomalous to rob States of the right to keep those persons from serving in Congress. If States cannot set qualifications for their congressmen, they would have no power over their characteristics, even though States have the power to select characteristics for the electorate. Here, too, the greater power reasonably includes the lesser.[42]

[42] Justice Story said that States did not reserve the right under the Tenth Amendment to set additional qualifications for the House and Senate, since those offices did not exist until the Constitution created them. 1 Joseph Story, *supra*, §§ 625-29, at 461-63. But Justice Story's predicate is wrong: Article V of the Articles of Confederation authorized States to select delegates by whatever method they chose. Since Article I of the Constitution did not delegate that power to the federal government, the Tenth Amendment reserved it to the States. *New York* v. *United States*, 112 S. Ct. 2408, 2417 (1992). Insofar as Justice Story feared that allowing States to set additional qualifications is inconsistent with the nature of a national government, term limits do not threaten the national government, as explained in the text.

2. The drafting history of the Qualifications Clauses supports our interpretation of its text. The original version of the Virginia Plan, prepared by Edmund Randolph, provided that "[t]he qualifications of (a) delegates shall be the age of twenty five years at least, and citizenship: (*and any person possessing these qualifications may be elected except*) * * *." 2 *Farrand* 139 (emphasis added). The Committee of Detail omitted the language making the listed qualifications exclusive before reporting the provision to the Committee of the Whole at the Convention. 2 *id.* at 137 n.6, 178. As reported, the Clause read as follows: "Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen of the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen." 2 *id.* at 178. When read against its background, that statement still does not constitute an affirmative expression of exclusivity, as did the earlier version of the Clause. The Committee of the Whole later referred the matter to the Committee of Style, which revised the Clauses into their present, negative form. *Powell*, 395 U.S. at 537. While the Committee of Style lacked power substantively to amend provisions adopted by the Committee of the Whole, 2 *Farrand* 553; *Powell*, 395 U.S. at 538; *Nixon*, 113 S. Ct. at 740, the Committee of Detail already had made the important change by deleting the exclusivity language. Thus, the drafting history of Article I reveals that the Framers did not intend to define exclusive qualifications.

Also relevant in this regard is the drafting history of the Electors Clause, which authorized the State to impose voting qualifications. The delegates considered a property ownership qualification for office, but ultimately chose not to do so.[43] The debate over a property qualification for

[43] After deciding not to incorporate term limits into the Constitution, the Committee of the Whole considered a motion by George

office indicates that at least some of the delegates decided against that prerequisite since it would be impossible for the Convention or Congress to select a uniform rule, *not* since property qualifications were disfavored. Property qualifications to vote or hold office were not repugnant concepts to the Framers; freehold requirements were common in the States. *The Anti-Federalist Papers and the Constitutional Convention Debates* 9 (Ralph Ketcheam ed. 1986); Robert C. DeCarli, Note, *The Constitutionality of State-Enacted Term Limits Under The Qualifications Clauses*, 71 Tex. L. Rev. 865, 879 (1993); Albert Edward McKinley, *The Suffrage Franchise in the Thirteen*

Mason directing the Committee of Detail to draft a clause requiring property and citizenship qualifications for Congress and disqualifying persons indebted to the national government. 2 *Farrand* 121. During the ensuing debate, opponents of the motion argued that it would perversely disqualify those individuals who had contributed to the war effort, that the goal of excluding corrupt legislators was better achieved by imposing appropriate qualifications on the electors, and that any partial list of disqualifications would leave the legislature bereft of authority to establish others. 2 *id.* at 121-26. For example, John Dickenson believed that "[i]t was impossible to make a compleat" recital of disqualifications, that "a partial one would by implication tie up the hands of the Legislature from supplying omissions," and that, as the result, "[t]he best defense lay in the freeholders who were to elect the Legislature." 2 *id.* at 123. James Wilson agreed, saying that "a partial enumeration of cases will disable the Legislature from disqualifying odious [and] dangerous characters." 2 *id.* at 125. The Committee of Detail could not agree on qualifications, 2 *id.* at 249 (John Rutlidge), and proposed a clause stating that the "Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient." 2 *id.* at 179. The Committee of the Whole resumed its consideration of the matter by debating a proposal by Charles Pinckney to add specific property requirements. 2 *id.* at 248-49. Gouverneur Morris moved to strike the qualifier "with regard to property," in order "to leave the Legislature entirely at large." 2 *id.* at 250. James Wilson agreed, believing that "[a] uniform rule would probably never be fixed by the Legislature," so that "this particular power would constructively exclude every other power of regulating qualifications." 2 *id.* at 251. The delegates thereafter voted against incorporating a property qualification into the Constitution. *Id.*

English Colonies in America (1905); 1 Charles Seymour & Donald Paige Frary, *How the World Votes* 210-11 (1918); cf. Charles Beard, *An Economic Interpretation of the Constitution of the United States* (1913). That conclusion is significant for the light it sheds on the Convention's decision not to incorporate term limits into the Constitution. The Convention's decision to reject the term limits features of the Virginia Plan cannot be interpreted as a condemnation of that principle because it is equally consistent with the conclusion that the Framers found undesirable the imposition of a uniform rule. Robert C. DeCarli, 71 Tex. L. Rev. at 879-80.

3. Congress also has expressed the judgment that the Qualifications Clauses are not exclusive. Throughout our history, Congress has enacted laws fixing qualifications (or, more precisely, imposing disqualifications) for Representatives and Senators. The First and Second Congresses enacted such laws;[44] Congress thereafter approved state constitutions that impose additional qualifications on Representatives and Senators;[45] and today various criminal code provisions disqualify felons from federal office.[46]

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[44] Act of Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67; Act of Apr. 30, 1790, ch. 9, § 21, 1 Stat. 117; Act of May 8, 1792, ch. 37, § 12, 1 Stat. 281.

[45] After the Civil War, pursuant to the Act of Mar. 2, 1867, 14 Stat. 428, in order to be readmitted to the Union Florida had to obtain Congress's approval of its state constitution. See Charles Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?—The Original Understanding*, 2 Stan. L. Rev. 5, 126 (1949). The Florida Constitution of 1868 required Representatives and Senators to have been a state resident for two years, a citizen of the United States for nine years, and a registered voter. Fla. Const. of 1868, § 23. Congress readmitted Florida to the Union in the Act of June 25, 1868, 15 Stat. 73, thereby signifying that Congress saw no constitutional objection to the additional Florida qualifications.

[46] *E.g.*, 18 U.S.C. §§ 201, 203, 592, 593, 1901, 2071, 2381, 2383; see *De Veau* v. *Braisted*, 363 U.S. 144, 159 (1960); see also, *e.g.*, 5 U.S.C. §§ 7324-7327 (the Hatch Act); *United States Civil Service Comm'n* v. *National Ass'n of Letter Carriers*, 413 U.S. 548 (1973) (rejecting First Amendment challenge to Hatch Act).

That long series of acts is strong proof that Congress finds the Qualifications Clauses not exclusive. See, *e.g.*, *Bowsher* v. *Synar*, 478 U.S. 714, 722 (1986).

B. *Powell* v. *McCormack* Does Not Prohibit States From Imposing Qualifications For The Offices Of Representative And Senator

The Arkansas Supreme Court believed that the holding in *Powell* v. *McCormack* answered the question presented by this case, but *Powell* involved a different issue. There, the House of Representatives denied Adam Clayton Powell his seat after his re-election based on Powell's alleged violations of House internal rules. This Court held that the House lacks power to add to the qualifications specified in Art. I, § 2, Cl. 2, when it judges those qualifications under Art. I, § 5. 395 U.S. at 547-48. This case, by contrast, involves a state law regulating access to the ballot, rather than the House's power to adjudicate the qualifications of duly-elected members. *Powell* did not address the power of the States to require candidates for Congress to meet certain conditions under state election law. In fact, this Court acknowledged that Powell had been "duly elected" under New York law, *id.* at 522, without addressing whether the state restrictions under which Powell was elected constituted "qualifications."[47] *Powell* held at most that each House lacks authority to exclude a person who is not ineligible under the Constitution to serve and who has been duly elected under the laws of

[47] New York law in 1966 included the following requirements: A candidate for the House had to be a registered voter in the State and had to satisfy durational and county residency requirements. A candidate could not have been convicted of any felony or any other infamous crime, and also could not have been adjudged mentally incompetent. A candidate also must have been literate in the English language; he must have satisfied political party enrollment requirements; he must have filed nominating petitions bearing a certain number of signatures as well as statements accepting the nomination and acknowledging his fulfillment of statutory requirements; and he must have satisfied state citizenship requirements. See N.Y. Elec. Law §§ 136, 137, 139, 147, and 152 (consol. 1964) (superceded).

the State that he seeks to represent. This Court's later decision in *Storer* makes clear that *Powell* does not treat all exclusions as "qualifications."

In interpreting Congress's power under Art. I, § 5, Cl. 1, to exclude otherwise qualified Members, this Court in *Powell* relied heavily on the practices of Parliament and colonial assemblies, the debates at the Constitutional Convention and in the States during the pre-ratification period, and Congress's post-ratification practice. 395 U.S. at 522-48. The court below relied on *Powell* and the history it discussed in interpreting the breadth of the Qualifications Clauses. Pet. App. 12a. In so doing, the Arkansas Supreme Court utterly failed to recognize that "historical evidence must be weighed as well as cited." *Nixon* v. *Fitzgerald*, 457 U.S. 731, 752 n.31 (1982). Much of the history discussed in *Powell* is not relevant here, and what is relevant is consistent with our interpretation of the Qualifications Clauses.

The discussion in *Powell* of the precedents expelling members of Parliament and colonial assemblies for acts of misconduct, 395 U.S. at 522-27, is irrelevant to the question whether States can set additional qualifications. *Powell* cited a comment by Alexander Hamilton that "[t]he qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature." *Id.* at 539, citing *The Federalist* No. 60, at 371. The "legislature" to which Hamilton referred is Congress, since the burden of his essay was to show that Congress's power over the "times, places, and manner" of elections could not threaten the union. *Id.* at 540. Indeed, Hamilton's statement cannot be read literally, because Article I did not "define and fix" qualifications of "the persons who may choose"; it left that power to the States. P. 11, *supra*.[48]

[48] *Powell* also cited similar remarks by James Madison. 395 U.S. at 533-34 and 540 n.74, citing 2 *Farrand* 249-250 and *The Federalist* No. 52, at 326 (J. Madison). Madison's statements also are best

Early cases of contested elections in Congress confirm the Framers' view that the qualifications in Article I were a floor, not a ceiling, and that where the Qualifications or Elections Clauses were silent, state election law must be applied. The early decisions of the House Committee on Elections recognized that the "right to judge, and the rule of decision, are distinct things; and, while the right to judge may be in one body, the prescription of the rule may be in another. The rule, in such cases as these, must be a State regulation, when it relates to points on which the States have exclusive legislation." *Spaulding* v. *Mead* (1805), reprinted in *Contested Elections* 161; see also *Ramsey* v. *Clark* (1789), reprinted at *id.* at 23-37, and quoted at p. 37 n.40, *supra*. With a few possible exceptions,[49] the early House and Senate Committees on Elections did not decide a contested election in a manner inconsistent with the view that the Qualifications Clauses are not exclusive.[50]

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seen as addressed to Congress, as the Court recognized elsewhere in *Powell*. 395 U.S. at 534.

[49] On two occasions in the 19th century, the House faced the issue whether States could add qualifications. In both cases, contestants challenged the election of Representatives who also held state office at the time of election, in violation of state law. See *Turney* v. *Marshall* and *Fouke* v. *Trumball*, reported in Chester H. Rowell, *supra*, at 141-42; *Wood* v. *Peters*, reported in *id.* at 401-02. In both instances, the delegates retained their seats notwithstanding the contrary state law, but dissents in both cases argued that States could impose such qualifications. "To hold otherwise would be to hold invalid provisions in the constitutions of nearly all the States (a complete list of which was given in the report), some of which were adopted before the Constitution itself." Chester H. Rowell, *supra*, at 402 (citing Report of Mr. Bennett). State resign-to-run laws are now deemed a lawful regulation of federal elections. *E.g.*, *Joyner*, 706 F.2d at 1531.

[50] The majority of contested election cases decided in the first fifty years of the Republic concerned allegations of voting irregularities. *E.g.*, *Jackson* v. *Wayne* (1791), reprinted in *Contested Elections* 47-68; *Easton* v. *Scott* (1816), *id.* at 272-86; *Loyall* v. *Newton* (1830), *id.* at 520-600. Other decisions reflect a strict adherence to other *disqualifications* under the federal constitution, *e.g.*, *In re Van Ness* (1802), *id.* at 521 ("The acceptance by a

Powell cited the recommendation of the House Committee of Elections in *Barney* v. *McCreery*, an 1807 election dispute in Maryland, for the proposition that States cannot add qualifications to Article I. In *McCreery*, the Committee recommended that the House admit William McCreery to his seat. The challenger claimed that McCreery had not met the state requirement of residence in Baltimore City, and the Committee rejected that claim on the ground that the Maryland law was invalid. State law required that one of the two district representatives be a town resident, with the other being a county resident. That law, according to the Committee, was "repugnant to the constitution, and therefore void." *Id.* at 167. The full House, however, rejected the form of the Committee's resolution. Based on its own resolution that did not denounce the Maryland law as unconstitutional, the House voted overwhelmingly (by a vote of 89-18) to seat McCreery without a report after it went to considerable lengths to gather evidence on whether McCreery complied with state law. *Id.* at 217-219; compare 17 *Annals of Congress* 882-86 (1807) (Mr. Randolph) with *id.* at 911-915 (Mr. Key), *reprinted in* 2 *The Founders' Constitution* 77-81. What *Powell* did not recognize is that not only did the House reject the Committee's resolution that the Maryland law was unconstitutional, but also that the Committee's resolution itself was aberrant: The resolution was inconsistent with other decisions by the Committee on Elections (as noted during the debates) and with practice before then.

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member of any Office under the United States, after he has been elected to, and taken his seat in Congress, operates as a forfeiture of his seat."); and latitude to the States to experiment with the manner of selecting its federal representatives, *e.g.*, *In re Lanman* (1825), *id.* at 871-76 (although there was no express provision for selection of Senators by State governors when vacancies occur, the Senate Committee of Elections recognized that many states employed this practice, although a governor cannot appoint to fill a vacancy that has not yet occurred).

We end where we began: Term limits and ballot access restrictions are a legitimate, historically-accepted, and judicially-approved means of ensuring that the public receives the benefits of rotation in elected office. Whether they are seen as merely regulating access to the ballot or are deemed to impose qualifications on federal elected office is far less important than is whether they are recognized as being a permissible exercise of the States' power under Article I and the Tenth Amendment to regulate the federal electoral process. History and reason resoundingly prove that they are.

CONCLUSION

The judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

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APPENDICES

APPENDIX A

Pertinent Constitutional Provisions

1. Art. I, § 2, Cl. 1 (the Voting Clause), of the Constitution provides as follows:

> [T]he electors in each State shall have the Qualifications requisite for the Electors of the most numerous Branch of the State Legislature.

2. Art. I, § 2, Cl. 2 (the House Qualifications Clause), of the Constitution of the United States provides as follows:

> No Person shall be a Representative who shall not have attained to the Age of twenty-five years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Art. I, § 3, Cl. 3 (the Senate Qualifications Clause), of the Constitution of the United States provides as follows:

> No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

4. Art. I, § 3, Cl. 7 (the Impeachment Clause), of the Constitution of the United States provides as follows:

> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

5. Art. I, § 4, Cl. 1 (the Elections Clause), of the Constitution of the United States provides as follows:

> The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to the Places of choosing Senators.

6. Art. I, § 6, Cl. 2 (the Incompatibility Clause), of the Constitution of the United States provides as follows:

> No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office.

7. Art. I, § 10, Cls. 1-3, of the Constitution provides as follows:

> No State shall enter into any Treasury, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contract, or grant any Title of Nobility.
>
> No State, shall without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.
>
> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or

> Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

8. Art. VI, Cl. 3 (the Oath or Affirmation Clause and the Religious Test Clause), of the Constitution of the United States provides as follows:

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

9. Section 3 of the Fourteenth Amendment of the Constitution of the United States provides as follows:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United S[illegible]es, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

10. The Tenth Amendment to the Constitution of the United States provides as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

11. Amendment 73 to the Arkansas Constitution provides as follows:

PREAMBLE:

The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people. Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers. Therefore, the people of Arkansas, exercising their reserved powers, herein limit the terms of elected officials.

SECTION 1—Executive Branch

(a) The executive Department of this State shall consist of a Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, all of whom shall keep their offices at the seat of government, and hold their offices for the term of four years, and until their successors are elected and qualified.

(b) No elected officials of the Executive Department of this State may serve in the same office more than two such four year terms.

SECTION 2—Legislative Branch

(a) The Arkansas House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. No member of the Arkansas House of Representatives may serve more than three such two year terms.

(b) The Arkansas Senate shall consist of members to be chosen every four years by the qualified electors of the several districts. No member of the Arkansas Senate may serve more than two such four year terms.

SECTION 3—Congressional Delegation

(a) Any person having been elected to three or more terms as a member of the United States House of Representatives from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States House of Representatives from Arkansas.

(b) Any person having been elected to two or more terms as a member of the United States Senate from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States Senate from Arkansas.

SECTION 4—Severability

The provisions of this Amendment are severable, and if any should be held invalid, the remainder shall stand.

SECTION 5—Provisions Self-Executing

Provisions of this Amendment shall be self-executing.

SECTION 6—Application

(a) This Amendment to the Arkansas Constitution shall take effect and be in operation on January 1, 1993, and its provisions shall be applicable to all persons thereafter seeking election to the offices specified in this Amendment.

(b) All laws and constitutional provisions which conflict with this Amendment are hereby repealed to the extent that they conflict with this Amendment.

APPENDIX B

Term Limits And Qualifications On Public Officials Prior To The Adoption Of The Constitution

1. Connecticut

A. Fundamental Orders of Connecticut, 1638-39

No person could be chosen governor more than once in two years. Conn. Fund. Orders of 1638-39, order 4, *reprinted in* 1 *Federal and State Constitutions* 519, 520 (Francis N. Thorpe ed. 1909) (hereinafter Thorpe). In addition, the governor had to be a member of some approved congregation, and formerly of the magistracy of the jurisdiction and all the magistrate freemen of the commonwealth. *Id.*

No person could be chosen as the deputy for any general court or assembly who was not a freeman of the commonwealth. *Id.* order 7, *reprinted in* 1 Thorpe 519, 521.

B. Fundamental Agreement, or Original Constitution of the Colony of New-Haven, June 4, 1639

Only church members could be free burgesses, magistrates and other public officers. New Haven Fund. Agree. or Orig. Const. of 1639, query V, *reprinted in* 1 Thorpe 523, 525.

C. Government of New Haven Colony, October 27/ November 6, 1643

Only members of approved churches could be free burgesses and hold power or trust in the ordering of any civil affairs. New Haven Gov't of 1643, order 1, *reprinted in* 1 Thorpe 526, 526. Only church members could be chosen as judges. *Id.* order 2, *reprinted in* 1 Thorpe 526, 527.

D. Charter of Connecticut, 1662

The governor, deputy governor, and 12 assistants were chosen out of the freemen of the company. Conn. Chart. of 1662, *reprinted in* 1 Thorpe 529, 530.

2. Delaware

A. Charter of Delaware, 1701

All persons professing to believe in Jesus Christ, notwithstanding their specific religion, were deemed capable of serving as a legislator or executive. Del. Chart. of 1701, art. I, *reprinted in* 1 Thorpe 557, 558.

No person within the government could be licensed to keep an ordinary tavern or house of public entertainment. *Id.* art. VII, *reprinted in* 1 Thorpe 557, 560.

B. Constitution of Delaware, 1776

County representatives to the house of assembly were chosen from the freeholders of the county. Del. Const. of 1776, art. 3, *reprinted in* 1 Thorpe 562, 562.

Three persons for each county were chosen as members of the council; the members of the council had to be freeholders of the county they represented, and upwards of 25 years of age. *Id.* art. 4, *reprinted in* 1 Thorpe 562, 562.

After serving a three-year term of office, the president of the state was ineligible for another term until the expiration of three years after leaving office. *Id.* art. 7, *reprinted in* 1 Thorpe 562, 563.

Regular officers of the army or navy of the continent or any state were not eligible to serve on the privy council. *Id.* art 8, *reprinted in* 1 Thorpe 562, 563-64.

If a member of the legislative council or house of assembly was elected to the privy council, he would lose his seat in the legislature. *Id.* art. 8, *reprinted in* 1 Thorpe 562, 564.

Members of the privy council were ineligible for a second term for three years after leaving the privy council. *Id.*

The delegates from Delaware to the Congress of the United States were chosen annually, or superseded in the meantime, by joint ballot of both houses of the general assembly. *Id.* art. 11, *reprinted in* 1 Thorpe 562, 564.

While in office, state court justices were prohibited from holding any additional office other than in the militia. *Id.* art. 12, *reprinted in* 1 Thorpe 562, 564.

Persons having served three annual terms as a county sheriff were ineligible to hold that office for the next three years. *Id.* art. 15, *reprinted in* 1 Thorpe 562, 565.

Justices of the state courts, members of the privy council, certain other state officials, and persons concerned with any army or navy contracts were ineligible for a position in either house of the general assembly. *Id.* art. 18, *reprinted in* 1 Thorpe 562, 565.

Every person chosen as a member of either house of assembly or appointed to any office or place of trust had to take an oath declaring his belief in certain religious tenants. *Id.* art. 22, *reprinted in* 1 Thorpe 562, 566.

No clergyman or preacher was deemed capable of holding state office or serving in the state legislature while he continued in the exercise of the pastoral function. *Id.* art. 29, *reprinted in* 1 Thorpe 562, 567-68.

C. An Act for Regulating Elections, and Ascertaining the Number of the Members of Assembly, 1704-1741

No inhabitants of the government of Delaware had the right of being elected unless: (1) they were natural born subjects of Great Britain, or were naturalized in England, Delaware or Pennsylvania; (2) they were 21 years of age or upwards; (3) they were freeholders in Delaware, and had at least 50 acres of well settled land, 12 acres

of which were cleared and improved, or otherwise worth 40 pounds; and (4) they had been residents of the land for at least two years before the election. Act for Regulating Elections, and Ascertaining the Number of the Members of Assembly, *reprinted in The Earliest Printed Laws of Delaware 1704-1741*, at 86 (John D. Cushing ed. 1978).

3. Georgia

A. Charter of Georgia, 1732

The positions of president of the colonial corporation and chairman of the common council of the corporation were rotated for every meeting among all the members of the corporation. Ga. Chart. of 1732, *reprinted in* 2 Thorpe 765, 768. A person who had served as president or chairman at the previous meeting was ineligible to serve in these positions at the next meeting. *Id., reprinted in* 2 Thorpe 765, 769.

While a person served as a treasurer or secretary of the corporation, he was incapable of being a member of the corporation. *Id., reprinted in* 2 Thorpe 765, 773.

Persons with a continuing interest in lands granted by the corporation were deemed incapable of being a memmer of the corporation. *Id., reprinted in* 2 Thorpe 765, 774.

B. Constitution of Georgia, 1777

Members of the state legislature had to have resided in the state for at least 12 months and in the county they represented for at least three months. Ga. Const. of 1777, art. VI, *reprinted in* 2 Thorpe 777, 779. They also had to be Protestants, be at least 21 years old, and be owners of 250 acres of land or some property worth 250 pounds. *Id.*

No person who held a continuing title of nobility was capable of serving as a representative or other state official. *Id.* art. XI, *reprinted in* 2 Thorpe 777, 780.

The continental delegates were appointed annually by ballot, and had the right to sit, debate, and vote in the house of assembly, and were deemed a part thereof, subject, however to the regulations contained in the Twelfth Article of the Confederation of the United States. *Id.* art. XVI, *reprinted in* 2 Thorpe 777, 780. Article Twelve of the Articles of Confederation provided that debts contracted by Congress prior to the assembling of the United States were debts of the United States. U.S. Arts. of Confed. of 1777, art. XII, *reprinted in* 1 Thorpe 9, 15.

No person holding a post of profit under the state of Georgia or any person bearing a military commission under any state, except an officer of the militia, could be elected a state representative. Ga. Const. of 1777, art. XVII, *reprinted in* 2 Thorpe 777, 780. If any representative accepted such a post during his term, his seat immediately became vacant and he could not run for reelection while continuing to hold the post. *Id.*

No person could hold more than one office of profit at the same time. *Id.* art. XVIII, in 2 Thorpe 777, 781.

The governor was chosen annually by ballot and was not eligible to serve for more than one year out of three. *Id.* art. XXIII, *reprinted in* 2 Thorpe 777, 781. The governor also was prohibited from holding any military commission under any other state. *Id.* No person was eligible to serve as governor who had not resided in the state for three years. *Id.* art. XXIV, *reprinted in* 2 Thorpe 777, 781.

No clergyman was allowed a seat in the legislature. *Id.* art. LXII, *reprinted in* 2 Thorpe 777, 785.

C. An Act to Ascertain the Manner and Form of Electing Members to Represent the Inhabitants of this Province in the Common House of Assembly, 1761

Every person elected to the common house of assembly had to be qualified as follows: (1) he had to be a free born subject of Great Britain or its dominions, or a foreign person naturalized; (2) he had to be a Christian; (3) he had to be at least 21 years old; (3) he had to have been a resident of the province for at least 12 months; and (4) he had to own at least 500 acres of land in the province. Act to Ascertain the Manner and Form of Electing Members to represent the Inhabitants of this Province in the Common House of Assembly, art. VI (1761), *reprinted in* 1 *The Earliest Printed Laws of the Province of Georgia 1755-1770*, at 108 (John D. Cushing ed. 1978).

The provost-marshall managing an election was prohibited from returning himself as a member to serve in the general assembly. *Id.* art. VIII, *reprinted in* 1 *The Earliest Printed Laws of the Province of Georgia 1755-1770*, at 109.

4. Maryland

A. Constitution of Maryland, 1776

State chancellors and judges were prohibited from holding any other office, civil or military. Md. Const. of 1776, Decl. of Rights, art. XXX, *reprinted in* 3 Thorpe 1686, 1689.

Article XXXI provided that a long continuance in the first executive departments of power and trust was dangerous to liberty and stated that a rotation in those departments was one of the best securities of personal freedom. *Id.* art. XXXI, *reprinted in* 3 Thorpe 1686, 1689.

Persons were prohibited from holding, at the same time, more than one office of profit. *Id.* art. XXXII, *reprinted in* 3 Thorpe 1686, 1689.

Article XXXV provided that no other test or qualification should be required on admission to any office of trust or profit other than an oath of support and fidelity to the state, an oath of office, and a declaration of a belief in the Christian religion. *Id.* art. XXXV, *reprinted in* 3 Thorpe 1686, 1690.

To qualify for the house of delegates, a person had to: (1) reside in the county from where they were chosen for one year preceding the election; (2) be above 21 years of age; and (3) have real or personal property in the state valued at more than 500 pounds. Md. Const. of 1776, Form of Gov't, art. II, *reprinted in* 3 Thorpe 1686, 1691.

To qualify for the state senate, a person had to: (1) reside in the state for more than three years preceding the election; (2) be above 25 years of age; and (3) have real and personal property valued at more than 1,000 pounds. *Id.* art. XV, *reprinted in* 3 Thorpe 1686, 1693-94.

To qualify for the council to the governor, a person had to: (1) reside in the state for more than three years preceding the election; (2) be above 25 years of age; and (3) have land valued at more than 1,000 pounds in the state. *Id.* art. XXVI, *reprinted in* 3 Thorpe 1686, 1695.

Maryland's delegates to congress were chosen annually, or superseded in the mean time, by joint ballot of both houses of the assembly. *Id.* art. XXVII, *reprinted in* 3 Thorpe 1686, 1695. The delegates had to be rotated so that at least two of them were changed annually. *Id.* No person was permitted to serve as one of Maryland's delegates to congress for more than three of six years. *Id.* No person who held an office of profit in the gift of congress was eligible to sit in congress. *Id.* No person was eligible to sit in congress as a delegate from Maryland unless he: (1) was above 21 years old; (2) had been

a resident of the state for more than five years preceding the election; and (3) had real and personal estate in Maryland valued at more than 1,000 pounds. *Id.* art. XXVII, *reprinted in* 3 Thorpe 1686, 1695-96.

No person was eligible to serve as governor unless he: (1) was above 25 years of age; (2) had been a resident of the state for more than five years preceding the election; and (3) had real and personal property in the state valued at more than 5,000 pounds of which 1,000 had to be a freehold estate. *Id.* art. XXX, *reprinted in* 3 Thorpe 1686, 1696.

A person could not serve as governor for more than three years successively, and former governors could not serve again until four years after leaving office. *Id.* art. XXXI, *reprinted in* 3 Thorpe 1686, 1696.

Senators, delegates to the assembly, and members of the council were prohibited from holding any office of profit, or receiving the profits of any office held by another person. *Id.* art. XXXVII, *reprinted in* 3 Thorpe 1686, 1697. The governor was prohibited from holding any other Maryland office of profit. *Id.* The following persons were also disqualified from holding a seat in the general assembly or the council of Maryland: (1) anyone holding a place of profit or receiving any part of the profits thereof; (2) anyone receiving profits from supplying clothing or provisions to the army or navy; (3) anyone holding any office under the United States or another state; (4) ministers and preachers; and (5) any person employed in the regular land service or marine of Maryland or the United States. *Id.*

Delegates to Congress, state senators, delegates to the assembly, and members of the Council were prohibited from holding or executing any office of profit or receiving the profits from such an office held by another person. *Id.* art. XXXIX, *reprinted in* 3 Thorpe 1686, 1697. Persons violating this provision could be forever disqualified from holding any office or place of trust or profit. *Id.*

County sheriffs were elected to three year terms and were ineligible for reelection for four years after leaving office. *Id.* art. XLII, *reprinted in* 3 Thorpe 1686, 1698. To be eligible for the office of county sheriff, a person had to: (1) be an inhabitant of the county; (2) be above 21 years old; and (3) have real and personal property in the state valued at more than 1,000 pounds. *Id.*

Field officers of the militia were ineligible to serve as a senator, delegate, or member of the council. *Id.* art. XLV, *reprinted in* 3 Thorpe 1686, 1699.

Civil officers appointed for a particular county had to reside in that county for six months before their appointment and had to continue residing in the county while in office. *Id.* art. XLVI, *reprinted in* 3 Thorpe 1686, 1699.

B. An Act Directing the Manner of Electing and Summoning Delegates and Representatives to Serve in Succeeding Assemblies, and for Ascertaining the Expenses of the Councillors, Delegates of Assembly and Commissioners of the Provincial and County Courts of this Province, 1716

To qualify as a county delegate to the general assembly, a person had to be a freeman of the county, and had to own a freehold of 50 acres of land or be a resident having a viable estate of at least 40 pounds within the county. Act Directing the Manner of Electing and Summoning Delegates and Representatives to Serve in Succeeding Assemblies, and for Ascertaining the Expenses of the Councillors, Delegates of Assembly and Commissioners of the Provincial and County Courts of this Province (1716), *reprinted in The Laws of the Province of Maryland*, at 186 (John D. Cushing ed. 1978). County sheriffs were not eligible to serve as delegates. *Id.* The keeper of an ordinary (tavern) within the province and other persons disabled by the laws of England from serving in

parliament were ineligible to serve in the general assembly. *Id.*

5. Massachusetts

A. The Charter of Massachusetts Bay, 1629

The governor, deputy governor and 18 assistants were elected and chosen out of the freemen of the company. Mass. Bay Chart. of 1629, *reprinted in* 3 Thorpe 1846, 1852.

B. The Charter of Massachusetts Bay, 1691

The representatives to the general court of assembly consisted of the governor, and assistants, as well as freeholders of the province or territory elected by the freeholders and other inhabitants. Mass. Bay Chart. of 1691, *reprinted in* 3 Thorpe 1870, 1878.

C. Explanatory Charter of Massachusetts Bay, 1725

The representatives to the general court of assembly consisted of the governor, and assistants, as well as freeholders of the province or territory elected by the freeholders and other inhabitants. Mass. Bay Explan. Chart. of 1725, *reprinted in* 3 Thorpe 1886, 1886-87.

D. An Act for Ascertaining the Number, and Regulating the House of Representatives, 1692

Representatives to the great court of Assembly were chosen from among freeholders. Act for Ascertaining the Number, and Regulating the House of Representatives (1692), *reprinted in Massachusetts Province Laws 1692-1699*, at 52 (John D. Cushing ed. 1978).

E. An Act to Prevent Default of Appearance of Representatives to Serve in the General Assembly, 1693

Representatives of a town were required to be freeholders and residents of that town. Act to Prevent Default of Appearance of Representatives to Serve in the General Assembly (1693), *reprinted in Massachusetts Province Laws 1692-1699*, at 77 (John D. Cushing ed. 1978).

F. Constitution or Form of Government For the Commonwealth of Massachusetts, 1780

This constitution provided that "[i]n order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life." Mass. Const. of 1780, pt. 1, art. VIII, *reprinted in* 3 Thorpe 1888, 1890-91.

No person was capable of being elected as a state senator unless: (1) he owned a freehold within the commonwealth of at least 300 pounds, or possessed a personal estate of at least 600 pounds, or both to the amount of the same sum; (2) he had been an inhabitant of the commonwealth for the five years immediately preceding the election; and (3) at the time of the election, he was an inhabitant of the district choosing the senator. *Id.* pt. 2, ch. I, § II, art. V, *reprinted in* 3 Thorpe 1888, 1897.

No person was qualified to serve in the commonwealth's house of representatives unless for at least one year preceding the election: (1) he was an inhabitant of the town choosing the representative; and (2) he owned a freehold valued at 100 pounds in the town choosing the representative, or owned an estate valued at 200 pounds. *Id.* pt. 2, ch. I, § III, art. III, *reprinted in* 3 Thorpe 1888, 1898. A person ceased to represent the town upon ceasing to possess those qualifications. *Id.*

No person was eligible to serve as governor unless: (1) at the time of his election, he had been an inhabitant of the commonwealth for the preceding seven years; (2)

at the same time, he owned a freehold with the commonwealth of the value of 1,000 pounds; and (3) he declared himself to be a Christian. *Id.* pt. 2, ch. II, § I, art. II, *reprinted in* 3 Thorpe 1888, 1900.

The lieutenant-governor had to be qualified in the same manner as the governor on the points of religion, property, and residence. *Id* pt. 2, ch. II, § II, art I, *reprinted in* 3 Thorpe 1888, 1903.

The Massachusetts delegates to the Congress of the United States were elected annually by joint ballot of the commonwealth legislature. *Id.* pt. 2, ch. IV, *reprinted in* 3 Thorpe 1888, 1906. They could be recalled and replaced at any time during the year. *Id.*

Any person chosen governor, lieutenant-governor, councillor, senator, or representative had to declare that he believed the Christian religion, and possessed the property required as a qualification for his office. *Id.* pt. 2, ch. VI, art I, *reprinted in* 3 Thorpe 1888, 1908.

The governor, lieutenant-governor, and judges of the supreme court were prohibited from holding any other state office, unless specifically authorized in the constitution. *Id.* pt. 2, ch. VI, art. II, *reprinted in* 3 Thorpe 1888, 1909. They were also prohibited from holding any office, or receiving any salary, from any other state or government. *Id.*

No person holding one of several enumerated state offices was permitted to also hold a seat in the state legislature. *Id.* Persons were prohibited from ever holding more than one of the following offices: judge of probate, sheriff, register of probate, or register of deeds. *Id.* In addition, no person could hold more than two of any other state appointed offices. *Id.*

No person could hold a seat in the legislature, or any office of trust or importance under the commonwealth if convicted of bribery or corruption in obtaining an election or appointment. *Id.* 3 Thorpe 1888, 1910.

6. New Hampshire

A. An Act to Return Able and Sufficient Jurors to Serve in the Several Courts of Justice, and to Regulate the Election of Representatives to Serve in the General Assembly within this Province, 1699

No person other than freeholders of the value or income of 40 shillings per year or more in land, or of 50 pounds in personal estate, were capable of being elected to serve in the general assembly. Act to Return Able and Sufficient Jurors to Serve in the Several Courts of Justice, and to Regulate the Election of Representatives to Serve in the General Assembly within this Province (1699), *reprinted in Acts and Laws of New Hampshire 1680-1726*, at 24 (John D. Cushing ed. 1978).

B. Constitution of New Hampshire, 1766

Members of the council, a branch of the legislature, were selected from among the reputable freeholders and inhabitants of the colony. N.H. Const. of 1776, *reprinted in* 4 Thorpe 2451, 2452.

C. Constitution of New Hampshire, 1784

Every inhabitant of the state having the proper qualifications had an equal right to be elected into office. N.H. Const. of 1784, pt. I, art. I, para. XI, *reprinted in* 4 Thorpe 2453, 2455.

Every person qualified as the constitution provided was considered an inhabitant for the purpose of being elected to state office, in the town, parish, and plantation where he dwelled and had his home. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2459.

No person was capable of being elected a senator who was not: (1) a Protestant; (2) the owner of a freehold estate within New Hampshire valued at 200 pounds; (3)

30 years old; (4) an inhabitant of the state for seven years immediately preceding his election; and (5) at the time of the election, an inhabitant of the district electing him. *Id.* pt. II, in 4 Thorpe 2453, 2460.

Every member of the house of representatives was required: (1) to have been an inhabitant of the state for two years imediately preceding his election; (2) to have owned, for two years immediately preceding his election, an estate within the place he would represent valued at 100 pounds, one half of which had to be a freehold; (3) at the time of his election, to be an inhabitant of the place he would represent; and (4) to be a Protestant. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2461-62. A person would cease to be a representative immediately upon ceasing to meet these qualifications. *Id.*

No person was eligible to serve as the president of New Hampshire unless: (1) at the time of his election, he had been an inhabitant of the state for the immediately preceding seven years; (2) he was 30 years old; (3) at the same time, he owned an estate valued at 500 pounds, one half of which had to be a freehold within the state; and (4) he was a Protestant. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2462-63.

The qualifications for counsellors were the same as those required for senators. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2465.

The New Hampshire delegates to the Congress of the United States had to have the same qualifications as those required for the president of New Hampshire. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2467. No person was capable of being a delegate to Congress for more than three years in any term of six years. *Id.* No delegate to Congress was capable of holding any office under the United States for which he, or any other for his benefit, received any salary or emolument. *Id.*

The president and judges of the superior court were prohibited from holding any other state office, unless

specifically authorized in the constitution. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2469. They were also prohibited from holding any office, or receiving any salary, from any other state or government. *Id.*

No person holding one of several enumerated state offices was permitted to also hold a seat in the state legislature. *Id.* Persons were prohibited from ever holding more than one of the following offices: judge of probate, sheriff, and register of deeds. *Id.* In addition, no person could hold more than two of any other state appointed offices. *Id.*

No person could hold a seat in the legislature, or any office of trust or importance under the state, if convicted of bribery or corruption in obtaining an election or an appointment. *Id.* pt. II, *reprinted in* 4 Thorpe 2453, 2470.

7. New Jersey

A. The Concession and Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jersey, to and with All and Every the Adventurers and All Such as Shall Settle or Plant There, 1664

Twelve deputies or representatives to the general assembly were selected by and among the freemen inhabiting the province. Concession and Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jersey, to and with All and Every the Adventurers and All Such as Shall Settle or Plant There, pt. 1, item 9 (1664), *reprinted in* 5 Thorpe 2535, 2537.

Without the consent of the general assembly, only freeholders of the province could be appointed as a judge or other civil officer. *Id.* pt. 3, art. II, *reprinted in* 5 Thorpe 2535, 2539.

B. A Declaration of the True Intent and Meaning of Us the Lords Proprietors, and Explanation of There Concessions Made to the Adventurers and Planters of New Caesarea or New Jersey, 1672

No person was counted as a freeman, capable of being elected for any office, until he held lands by patent from the lords proprietors. Declaration of the True Intent and Meaning of Us the Lords Proprietors, and Explanation of There Concessions Made to the Adventurers and Planters of New Caesarea or New Jersey, pt. 1, art. I (1672), *reprinted in* 5 Thorpe 2544, 2544-45.

C. The Charter or Fundamental Laws, of West New Jersey, Agreed Upon, 1676

Upon the second instance of bearing false witness in a criminal case, a person was disabled forever from being admitted into any public office within the province. Charter or Fundamental Laws, of West New Jersey, Agreed Upon, ch. XX (1676), *reprinted in* 5 Thorpe 2548, 2550-51.

D. Province of West New-Jersey, In America, the 25th of the Ninth Month Called November, 1681

No person was rendered incapable of office on account of their faith and worship. Province of West New-Jersey, In America, the 25th of the Ninth Month Called November, art. X (1681), *reprinted in* 5 Thorpe 2565, 2567.

E. The Fundamental Constitutions For the Province of East New Jersey in America, Anno Domini, 1683

Although the original governor was elected to serve for life and good behavior, subsequent governors were limited to a three year term. Fundamental Constitutions For the Province of East New Jersey in America, art. I (1683), *reprinted in* 5 Thorpe 2574, 2574. Persons advising that a subsequent governor should serve for a longer term or

that the governor, or his son, should be chosen again, "within the three years," were considered public enemies. *Id.* Subsequent governors accepting such continued service were also considered public enemies. *Id.*

Publicly elected members of the great council served three year terms, after which they were not "capable to come in again for two years after, and therefore they [were not] put in the ballot in elections for that year." *Id.* art. II, *reprinted in* 5 Thorpe 2574, 2575.

Persons qualified to be freemen, capable of being chosen for the great council, were every planter and inhabitant dwelling and residing in the province who: (1) had 50 acres of land, and had cultivated ten acres of it; (2) in the boroughs, had a house and three acres; or (3) was only renting a house and land, but had 50 pounds in stock of his own. *Id.* art. III, *reprinted in* 5 Thorpe 2574, 2575. Anyone giving or accepting a bribe in an election forfeited forever their right to be elected. *Id.*

Persons were prohibited from nominating for a seat on the great council someone known to be guilty for a year before of adultery, whoredom, drunkenness, or any such immorality or who is insolvent or a fool. *Id.*

The great council also consisted of the 24 largest land owners, or proprietors of the colony; if a proprietor did not retain at least one fourth of his propriety, however, he lost his seat in the government. *Id.* art. XIII, *reprinted in* 5 Thorpe 2574, 2578. Proprietors under 21 years old were not permitted to vote in the great council. *Id.* 5 Thorpe 2574, 2579.

No man could be admitted to the great or common council or other place of public trust unless he professed his faith in Jesus Christ, and declared he would not prejudice others based on their differing religious beliefs. *Id.* art. XVI, *reprinted in* 5 Thorpe 2574, 2580.

Persons were prohibited from holding more than one public office at one time. *Id.* art. XVII, *reprinted in* 5 Thorpe 2574, 2580.

F. An Act Regulating the Qualifications of Representatives to Serve in the General Assembly in this Province of New Jersey, 1709

Every person elected to serve as a representative in the general assembly had to own 1,000 acres of land or be worth 500 pounds in real and personal estate. Act Regulating the Qualifications of Representatives to Serve in the General Assembly in this Province of New Jersey (1709), *reprinted in The Earliest Printed Laws of New Jersey 1703-1722*, at 5-6 (John D. Cushing ed. 1978).

Every person elected as a representative for a county to the general assembly had to be a freeholder in the division he was chosen to represent. *Id.* No person who was not a freeholder was capable of being elected to the general assembly. *Id.*

G. An Act for Better Qualifying Representatives to Serve in General Assembly within this Province, 1709

No person was capable of being elected a representative of any city, town or county to the general assembly who was not inhabiting and residing on the date of election, and for three months preceding, the city, town, or county in which he was elected. Act for Better Qualifying Representatives to Serve in General Assembly within this Province (1709), *reprinted in The Earliest Printed Laws of New Jersey 1703-1722*, at 11 (John D. Cushing ed. 1978).

No person was capable of serving in the general assembly who did not have an estate within the division in which he was elected sufficient to qualify him. *Id.*

H. Constitution of New Jersey, 1776

A member of the legislative council of the colony of New Jersey had to be: (1) and have been for the year immediately preceding the election, an inhabitant and

freeholder in the county he was to represent; and (2) worth at least 1,000 pounds, of real and personal estate within the same county. N.J. Const. of 1776, art. III, *reprinted in* 5 Thorpe 2594, 2595.

No person was entitled to a seat in the assembly unless he was: (1) and had been for the year immediately preceding the election, an inhabitant of the county he was to represent; and (2) worth 500 pounds, in real and personal estate within the same county. *Id.*

Annually, the council and the assembly jointly elected a fit person within the colony to be governor for one year. *Id.* art. VII, *reprinted in* 5 Thorpe 2594, 2596.

County sheriffs and coroners were elected to one year terms of office. *Id.* art. XIII, *reprinted in* 5 Thorpe 2594, 2597. After someone had served three one year terms as sheriff or coroner, they were not capable of being elected again until three years had elapsed. *Id.*

Commissioners of appeal were selected from among judicious freeholders of good character. *Id.* art. XIV, *reprinted in* 5 Thorpe 2594, 2597.

Any Protestant demeaning themselves peaceably under the government was capable of: (1) being elected to any office of profit or trust; or (2) being a member of either branch of the legislature. *Id.* art. XIX, *reprinted in* 5 Thorpe 2594, 2597-98.

No judge, sheriff, or any other person holding a post of profit under the government could hold a seat in the assembly. *Id.* art. XX, *reprinted in* 5 Thorpe 2594, 2598.

8. New York

A. Constitution of New York, 1777

The state senate consisted of 24 freeholders chosen out of the body of freeholders. N.Y. Const. of 1777, art. X, *reprinted in* 5 Thorpe 2623, 2631.

Annually, a wise and discret freeholder had to be elected governor by the freeholders of the state. *Id.* art. XVII, *reprinted in* 5 Thorpe 2623, 2632. The lieutenant-governor was elected in the same manner as the governor. *Id.* art. XX, in 5 Thorpe 2623, 2633.

Judges held their offices during good behavior or until they reached 60 years of age. *Id.* art. XXIV, *reprinted in* 5 Thorpe 2623, 2634.

The chancellor and judges of the supreme court could not, at the same time, hold any other office, except that of delegate to the general congress, upon special occasions. *Id.* art. XXV, *reprinted in* 5 Thorpe 2623, 2634. First judges of the county courts could not hold any other office at the same time, except that of senator or delegate to the general congress. *Id.*

Sheriffs and coroners were appointed annually and no person was capable of holding either office for more than four years successively. *Id.* art. XXVI, *reprinted in* 5 Thorpe 2623, 2634. The sheriff was incapable of holding any other office at the same time. *Id.*

Delegates representing New York in the Congress of the United States were annually appointed as follows: the senate and assembly each nominated a number of persons equal to the whole number of delegates to be appointed; those persons on both lists became delegates; one half of the persons not on both lists were also elected as delegates by a joint ballot of both houses. *Id.* art. XXX, *reprinted in* 5 Thorpe 2623, 2634-35.

Ministers and priests were not eligible to hold any civil or military office within the state. *Id.* art XXXIX, *reprinted in* 5 Thorpe 2623, 2637.

9. North Carolina

A. A Declaration and Proposals of the Lord Proprietor of Carolina, Aug. 25-Sept. 4, 1663

Deputies or assemblymen for a legislative body were chosen by the freeholders out of themselves. Declaration and Proposals of the Lord Proprietor of Carolina, art. 4 (1663), *reprinted in* 5 Thorpe 2753, 2754-55.

B. Concessions and Agreements of the Lords Proprietors of the Province of Carolina, 1665

The freemen inhabiting the province chose, from amongst themselves, 12 deputies or representatives to the general assembly. Concessions and Agreements of the Lords Proprietors of the Province of Carolina, pt. 1, item 10 (1665), in 5 Thorpe 2756, 2757-58.

Without the consent of the general assembly, only freeholders could be appointed as judges and other civil officials. *Id.* pt. 3, item 2, *reprinted in* 5 Thorpe 2756, 2760.

C. The Fundamental Constitutions of Carolina, 1669

The seven chief offices of state were enjoyed by none but the lord proprietors. Fundamental Constitutions of Carolina, art. 2, (1669), *reprinted in* 5 Thorpe 2772, 2772.

The hereditary nobility were by the right of their dignity members of parliament. *Id.* art. 9, *reprinted in* 5 Thorpe 2772, 2773.

Sheriffs and justices had to be inhabitants of, and had to have at least 500 acres of freehold within, the county or district that they served. *Id.* art. 61, *reprinted in* 5 Thorpe 2772, 2779-80.

Precinct stewards and justices had to be inhabitants of, and had to have at least 300 acres of freehold within, their precinct. *Id.* art. 63, *reprinted in* 5 Thorpe 2772, 2780.

No man could be chosen as a member of the parliament who had less than 500 acres of freehold within the precinct for which he was chosen. *Id.* art. 72, *reprinted in* 5 Thorpe 2772, 2781.

No man could be a register of any precinct who did not have at least 300 acres of freehold within the precinct. *Id.* art. 82, *reprinted in* 5 Thorpe 2772, 2782.

No man could be a register of colony who did not have at least 50 acres of freehold within the colony. *Id.* art. 85, *reprinted in* 5 Thorpe 2772, 2782.

Constables of a colony had to have an estate above 100 acres in the colony. *Id.* art. 91, *reprinted in* 5 Thorpe 2772, 2783.

No person above the age of 17 was capable of any place of profit or honor unless his name was recorded in one, and only one, church record. *Id.* art. 101, *reprinted in* 5 Thorpe 2772, 2784.

D. Constitution of North Carolina, 1776

Each member of the senate: (1) had to reside in the county from which he was chosen for one year immediately preceding his election; and (2) for the same time he had to have possessed, and had to continue to possess, not less than 300 acres of land, in fee, within the county he represented. N.C. Const. of 1776, pt. 2, art. V, *reprinted in* 5 Thorpe 2787, 2790.

Each member of the house of commons: (1) had to reside in the county from which he was chosen for one year immediately preceding his election; and (2) for six months had to have possessed, and had to continue to possess, not less than 100 acres of land, in fee or for the term of his own life, within the county he represented. *Id.* pt. 2, art. VI, *reprinted in* 5 Thorpe 2787, 2790.

The house and senate of North Carolina jointly elected a governor for one year, who was not eligible for that

office longer than three years in six successive years. *Id.* pt. 2, art. XV, *reprinted in* 5 Thorpe 2787, 2791. No person was eligible to serve as governor who: (1) was under 30 years of age; (2) had not been a resident of North Carolina above five years; or (3) did not have a freehold of lands and tenements above the value of 1,000 pounds within the state. *Id.*

No person who received public monies could have a seat in either house of the general assembly or be eligible for any state office until such person paid into the treasury all sums for which they might have been accountable and liable. *Id.* pt. 2, art. XXV, *reprinted in* 5 Thorpe 2787, 2792.

No state treasurer could hold a seat in either house of the general assembly or council of state, during his continuance in that office, or before he finally settled his accounts with the public. *Id.* pt. 2, art. XXVI, *reprinted in* 5 Thorpe 2787, 2792.

No officer in the regular army or navy of the United States, North Carolina, or any other state, nor any contractor or agent supplying such army or navy with clothing or provisions, could have a seat in either house of the general assembly or the council of state. *Id.* pt. 2, art. XXVII, *reprinted in* 5 Thorpe 2787, 2792.

No member of the council of state could have a seat in either house of the general assembly. *Id.* pt. 2, art. XXVIII, *reprinted in* 5 Thorpe 2787, 2792.

Certain judges and persons holding certain executive posts could not hold a seat in either house of the general assembly or the council of state. *Id.* pt. 2, arts. XXIX & XXX, *reprinted in* 5 Thorpe 2787, 2792.

No clergyman or preacher was capable of serving in either house of the general assembly or the council of state. *Id.* pt. 2, art. XXXI, *reprinted in* 5 Thorpe 2787, 2793.

No person who denied the being of God, or the Protestant religion, or certain other religious tenants was capable of holding any office of trust or profit in the civil department of the state. *Id.* pt. 2, art. XXXII, *reprinted in* 5 Thorpe 2787, 2793.

No person in the state could hold more than one lucrative office at a time, however, a militia appointment and the office of a justice of the peace were not considered lucrative offices. *Id.* pt. 2, art. XXXV, *reprinted in* 5 Thorpe 2787, 2793.

Delegates for North Carolina to the Continental Congress were chosen annually by ballot of the general assembly, but could be superseded in the mean time. *Id.* pt. 2, art. XXXVII, *reprinted in* 5 Thorpe 2787, 2793. No person could be elected to serve as a delegate for North Carolina to the Continental Congress for more than three years successively. *Id.*

E. An Act for Qualification of Public Officers, 1715

No person other than someone commissioned by the lords proprietors of Carolina could execute an office of profit or trust within the government until he gave to the government a secured bond for the faithful discharge of his office payable to the lords proprietors. Act for Qualification of Public Officers, art. III (1715), *reprinted in* 2 *The Earliest Printed Laws of N. Carolina 1669-1751*, at 15 (John D. Cushing ed. 1977).

10. Pennsylvania

A. Penn's Charter of Liberties, 1682

The freemen of the province selected representatives from among themselves to serve a three year term in a provincial council. Penn's Charter of Liberties, items 2-3 (1682), *reprinted in* 5 Thorpe 3047, 3048. The terms were staggered so that one third of the council was elected each year. *Id.* item 3, *reprinted in* 5 Thorpe 3047, 3048.

After the first seven years, every one leaving the council was incapable of being chosen again for one whole year so that all were fit for the government and experienced the care and burden of it. *Id.* item 4, *reprinted in* 5 Thorpe 3047, 3048.

B. Frame of Government of Pennsylvania, 1682

The following persons were deemed freeholders capable of being elected as a representative to the provincial council or general assembly: (1) every inhabitant of the province that purchased at least 100 acres of land, and his heirs and assigns; (2) every person who paid his passage and took 100 acres of land, at one penny an acre, and have cultivated ten acres thereof; (3) every prior servant or bonds-man, free by his service, who took up his 50 acres of land and cultivated 20 acres thereof; and (4) every inhabitant, artificer, or other resident in the province that paid scot and lot (an assessment based on the ability to pay) to the government. Frame of Government of Pennsylvania, pt. 3, item II (1682), *reprinted in* 5 Thorpe 3052, 3060.

A person who bribed an elector for his vote forfeited his election and was incapable of serving in the council or general assembly. *Id.* pt. 3, art. III, *reprinted in* 5 Thorpe 3052, 3060.

Persons that falsified or forged documents or records were dismissed of all places of trust. *Id.* pt. 3, art. XXI, in 5 Thorpe 3052, 3061.

No person could hold more than one public office at one time. *Id.* pt. 3, art. XXVII, *reprinted in* 5 Thorpe 3052, 3062.

All members of the provincial council, and the general assembly, and all other officers of the government: (1) had to possess faith in Jesus Christ; (2) could not have been convicted of ill fame or unsober and dishonest conversation; and (3) had to be at least 21 years old. *Id.* pt. 3, art. XXXIV, *reprinted in* 5 Thorpe 3052, 3062-63.

C. Frame of Government of Pennsylvania, 1696

No inhabitant of the province or territories of Pennsylvania had the right of being elected unless they: (1) were free denizens of the Pennsylvania government; (2) were at least 21 years old; (3) had 50 acres of land, ten acres of which were seated and cleared, or were otherwise worth 50 pounds; and (4) had been a resident within the government of Pennsylvania for two years immediately preceding the election. Frame of Government of Pennsylvania (1696), *reprinted in* 5 Thorpe 3070, 3071.

Persons who bribed an elector for his vote, or offered to serve for nothing or at a reduced salary were incapable of serving in council or assembly for that year. *Id.*, *reprinted in* 5 Thorpe 3070, 3073.

D. Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, 1701

All persons who professed to believe in Jesus Christ were capable, notwithstanding their specific religion, of serving the government in any capacity. Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, art. I (1701), *reprinted in* 5 Thorpe 3076, 3077.

This charter provided that the qualifications of the elected remained as established by a 1700 law entitled "An Act to Ascertain the Number of Members of Assembly, and to Regulate the Elections." *Id.* art. II, *reprinted in* 5 Thorpe 3076, 3078.

E. Constitution of Pennsylvania, 1776

This constitution provided that to restrain legislators and executives from oppression, the people had a right to reduce their public officers to a private station, and supply the vacancies by certain and regular elections. Penn. Const. of 1776, pt. 1, art. VI, *reprinted in* 5 Thorpe 3081, 3083.

All free men having a sufficient evident common interest with, and attachment to, the community had a right to be elected into office. *Id.* pt. 1, art. VII, *reprinted in* 5 Thorpe 3081, 3083.

No person could be elected to Pennsylvania's house of representatives unless he had resided in the city or county for which he would be chosen for two years immediately before the election; nor could any member hold concurrently any other office, except in the militia. *Id.* pt. 2, § 7, *reprinted in* 5 Thorpe 3081, 3084.

No person was capable of being elected a member to serve in the state house of representatives for more than four years in seven. *Id.* pt. 2, § 8, *reprinted in* 5 Thorpe 3081, 3084.

Each member of the state house of representatives was required to make a specified religious declaration before taking his seat. *Id.* pt. 2, § 10, *reprinted in* 5 Thorpe 3081, 3085. No other religious test was required of any civil officer or magistrate of the state. *Id.*

Delegates to represent Pennsylvania in Congress were chosen annually by ballot of the general assembly. *Id.* pt. 2, § 11, *reprinted in* 5 Thorpe 3081, 3085. The general assembly could supercede a delegate at any time. *Id.* No man representing Pennsylvania could sit in Congress longer than two years successively, nor be capable of reelection for three years afterwards. *Id.* No man who held an office in the gift of Congress could be elected to represent Pennsylvania in Congress. *Id.*

Members of the supreme executive council were elected to serve three years and no longer. *Id.* pt. 2, § 19, *reprinted in* 5 Thorpe 3081, 3087. One third of the seats on the supreme executive council were up for election each year. *Id.* In addition, any person who had served as member of the supreme executive council for three successive years was incapable of holding that office for four years afterwards. *Id.* The constitution explained that:

> [b]y this mode of election and continual rotation, more men will be trained to public business, there will in every subsequent year be found in the council a number of persons acquainted with the proceedings of the foregoing years, whereby the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented.

Id. No member of the state general assembly or delegate in Congress could be chosen as a member of the supreme executive council. *Id.* The treasurer of the state and other specified state officials were not capable of a seat in the state general assembly, executive council or Continental Congress. *Id.*

Judges of the Pennsylvania supreme court of judicature were not allowed to sit as members in the Continental Congress, executive council, or general assembly, nor to hold any other civil or military office. *Id.* pt. 2, § 23, *reprinted in* 5 Thorpe 3081, 3088.

If a court officer took a fee greater than allowed by law, he was disqualified forever from holding any state office. *Id.* pt. 2, § 26, *reprinted in* 5 Thorpe 3081, 3088-89.

No justice of the peace could sit in the general assembly unless he first resigned his commission. *Id.* pt. 2, § 30, *reprinted in* 5 Thorpe 3081, 3089.

No person could be elected to the office of sheriff for more than three successive years, or be capable of being again elected during four years afterwards. *Id.* pt. 2, § 31, *reprinted in* 5 Thorpe 3081, 3089.

Any person who bribed an elector was incapable of serving for the ensuing year. *Id.* pt. 2, § 32, *reprinted in* 5 Thorpe 3081, 3089.

A foreigner was not capable of being elected a representative until after two years residence. *Id.* pt. 2, § 42, *reprinted in* 5 Thorpe 3081, 3091.

11. Rhode Island

A. Government of Rhode Island, March 16-19, 1641

The freemen deputized from among themselves government ministers. R.I. Gov't of 1641, art. 3, *reprinted in* 6 Thorpe 3207, 3207-08.

B. Charter of Rhode Island and Providence Plantations, 1663

The governor, deputy governor, and ten assistants were elected and chosen out of the freemen of the company. R.I. Chart. of 1663, *reprinted in* 6 Thorpe 3211, 3214. The assistants and six other freemen of the company constituted the general assembly. *Id.*

12. South Carolina

A. An Act to Ascertain the Manner and Form of Electing Members to Represent the Inhabitants of this Province in the Commons House of Assembly, and to Appoint Who Shall be Deemed and Adjudged Capable of Choosing or being Chosen Members of the Said House, 1721

Every person elected to serve as a member of the commons house of assembly had to be qualified as follows: (1) he had to be a free born subject of the Kingdom of Great Britain or its dominions, or a naturalized foreign person; (2) he had to have attained the age of 24 years; (3) he had to have been a resident of the province for 12 months before the election; and (4) he had to own a settled plantation or freehold in the province of at least 500 acres and ten slaves, or houses, buildings, town-lots, or other lands in the province valued at 1,000 pounds. Act to Ascertain the Manner and Form of Electing Members to Represent the Inhabitants of this Province in the Commons House of Assembly, and to Appoint Who shall be Deemed and Adjudged Capable of Choosing or being Chosen Members of the Said House, art. VIII (1721),

reprinted in 1 *The Earliest Printed Laws of South Carolina 1692-1734*, at 443 (John D. Cushing ed. 1978).

By vote of the commons house of assembly, any person convicted of certain illegal election practices could be rendered incapable of siting or voting in the commons house of assembly. *Id.* art. XIV, *reprinted in* 1 *The Earliest Printed Laws of South Carolina 1692-1734*, at 445.

B. Constitution of South Carolina, 1776

No officer of the army or navy of the continent or South Carolina was eligible to be chosen for the privy council. S.C. Const. of 1776, art. V, *reprinted in* 6 Thorpe 3241, 3244.

The qualifications of the president and commander-in-chief, and vice president of South Carolina, and the members of the legislative and privy council were the same as those for the members of the general assembly. *Id.* art. VI, *reprinted in* 6 Thorpe 3241, 3244.

If a member of the general assembly or the legislative council accepted any place of emolument or any commission, except in the militia, he had to vacate his seat, but he was not disqualified from serving if reelected. *Id.* art. X, *reprinted in* 6 Thorpe 3241, 3244.

The qualifications of persons elected to the general assembly were the same as established in the election act, and construed to mean clear of debt. *Id.* art. XI, *reprinted in* 6 Thorpe 3241, 3245.

C. Constitution of South Carolina, 1778

The governor, lieutenant-governor, and members of the privy council all had to be Protestants. S.C. Const. of 1778, art. III, *reprinted in* 6 Thorpe 3248, 3249.

The governor and lieutenant-governor had to meet the following qualifications: (1) they had to have been residents in South Carolina for ten years; and (2) they had

to own a settled plantation or freehold in South Carolina valued at at least 10,000 pounds, clear of debt. *Id.* at V, *reprinted in* 6 Thorpe 3248, 3249.

Members of the privy council had to meet the following qualifications: (1) they had to have been residents in South Carolina for five years; and (2) they had to own a settled plantation or freehold in South Carolina valued at at least 10,000 pounds, clear of debt. *Id.*

No governor who had served for two years was eligible to serve as governor again until the full end and term of four years. *Id.* art. VI, *reprinted in* 6 Thorpe 3248, 3249.

No person could hold the office of governor or lieutenant-governor of South Carolina and hold, at the same time, any other civil or military office or commission (except in the militia) in South Carolina, any other state, or under the authority of the continental congress. *Id.* art. VII, *reprinted in* 6 Thorpe 3248, 3249.

Members of the privy council were elected to serve two years terms, and no member who had served for two years was eligible to serve again until the full end and term of four years. *Id.* art. IX, *reprinted in* 6 Thorpe 3248, 3249-50.

The following persons were not eligible to be elected to the privy council: (1) officers of the army or navy of South Carolina or the continent; (2) judges of any of the courts of law; and (3) fathers, sons, or brothers of the present governor. *Id.* art. IX, *reprinted in* 6 Thorpe 3248, 3250.

No person was eligible for a seat in the senate unless he: (1) was a Protestant; (2) was 30 years old; and (3) had been a resident in South Carolina for at least five years. *Id.* art. XII, *reprinted in* 6 Thorpe 3248, 3250. In addition, no person who resided in the district for which he was elected could take his seat in the senate, unless he owned a settled estate and freehold in the district valued at at least 2,000 pounds, clear of debt. *Id.*

art. XII, *reprinted in* 6 Thorpe 3248, 3251. No nonresident of the district was eligible to a seat in the senate unless he owned a settled estate and freehold in the district where he was elected valued at no less than 7,000 pounds, clear of debt. *Id.*

No person was eligible to sit in the house of representatives unless he: (1) was a Protestant; and (2) had been a resident in South Carolina for three years prior to his election. *Id.* art. XIII, *reprinted in* 6 Thorpe 3248, 3252. If a person was a resident of the district for which he was elected, his qualifications were the same as established in the election act, and construed to mean clear of debt. *Id.* No nonresident was eligible for a seat in the house of representatives unless he owned a settled estate and freehold in the district where he was elected valued at no less than 3,500 pounds, clear of debt. *Id.*

If a member of the senate or the house of representatives accepted any place of emolument or any commission, except for certain specified offices, he had to vacate his seat, but he was not disqualified from serving if reelected, unless he had been appointed as one of certain specified officials who were disqualified from being members of the senate or house of representatives. *Id.* art. XX, *reprinted in* 6 Thorpe 3248, 3253.

Ministers and preachers continuing in the exercise of pastoral functions, and for two years after, were not eligible to serve as governor, lieutenant-governor, or as a member of the senate, house of representatives or the privy council. *Id.* art. XXI, *reprinted in* 6 Thorpe 3248, 3253.

The delegates representing South Carolina in the Congress of the United States were chosen annually by joint ballot of the senate and house of representatives. This constitution did not require a delegate to vacate any seat he might have held in either house of the state legislature. *Id.* art. XXII, *reprinted in* 6 Thorpe 3248, 3253.

Sheriffs were chosen for two year terms, and no sheriff who served for two years was eligible to serve again until

the full end and term of four years. *Id.* art. XXVIII, *reprinted in* 6 Thorpe 3248, 3254. No person was eligible to serve as sheriff in any district unless he had resided therein for two years prior to the election. *Id.*

Certain specified executive officials served two year terms, and none of these officers who had served for four years was eligible to serve again until the full end and term of four years. *Id.* art. XXIX, *reprinted in* 6 Thorpe 3248, 3254.

13. Virginia

A. The Constitution of Virginia, 1776

This constitution provided that in order that members of legislative and executive departments of the state are restrained from oppression, by feeling and participating in the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies supplied by frequent, certain and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct. Va. Const. of 1776, pt. 1, § 5, *reprinted in* 7 Thorpe 3812, 3813.

No one person could exercise, at the same time, the powers of more than one of the three departments of state, the legislative, executive, and judiciary departments; except that justices of the county courts were eligible to serve in either house of assembly. *Id.* pt. 2, *reprinted in* 7 Thorpe 3812, 3815.

Representatives of a county or district to the house of delegates were chosen from the men who actually resided in, and were freeholders of, the county or district, or those who were duly qualified according to law. *Id.* pt. 2, *reprinted in* 7 Thorpe 3812, 3815-16.

Senators for a particular district were chosen from persons who were actually residents and freeholders within the district, or were duly qualified according to law, and

were upwards of 25 years of age. *Id.* pt. 2, *reprinted in* 7 Thorpe 3812. 3816.

A person could not serve as governor longer than three successive one year terms, and was not eligible for another term until four years after leaving that office. *Id.*

At the end of every three years, two members of the privy council were removed from office by joint ballot of both houses of the assembly and were ineligible for a seat on the council for the next three years. *Id.* pt. 2, *reprinted in* 7 Thorpe 3812, 3817.

Delegates for Virginia to the Continental Congress were chosen annually, or superseded in the meantime, by joint ballot of both houses of assembly. *Id.* pt. 2, *reprinted in* 7 Thorpe 3812, 3817.

APPENDIX C

State-imposed Qualifications on Members of Congress Through the 19th Century

[The following is reprinted from a report by Rep. R.T. Bennett, found in William H. Mobley, *Digest of Contested Election Cases* 88-99 (1889).]

Provisions in the constitutions of the original thirteen States prescribing qualifications of members of Congress, judges, etc., and extracts from the laws thereof touching the same subject-matter:

Connecticut

This State was first divided into Congressional districts in 1835. In that act it was provided that Representatives must reside in the districts represented.

Delaware

1792. Article 3, section 8 of the constitution of that date declares that—

No member of Congress, nor any person holding or exercising any office under the United States, shall at the same time, hold or exercise the office of judge, etc.

Article 2, section 12 of the same constitution provides that—

No member of Congress, nor any person holding any office under this State or the United States, shall, during their continuance in Congress, or in office, be a senator or representative.

The same is in the constitution of 1831. In the latter, article 5, section 2, it is provided in respect to judges—

But they shall hold no other office of profit, etc.

The legislature of Delaware in 1778, and also in 1790, declared—

That every person coming to vote for a Representative, agreeably to the directions of this act, shall deliver in writing on one ticket, or piece of paper, the names of two persons, inhabitants of this State, one of whom at least shall not be an inhabitant of the same county with himself, to be voted for as Representative.

Georgia

Constitution of 1789, article 2, section 5:

The governor shall, at stated times, receive for his services a compensation which shall neither be increased or diminished during the period for which he shall be elected. Neither shall he receive, during that period, any other emolument for the United States or any of them, or any foreign power.

In 1798 it was provided as follows (article 1, § 11):

No person holding a military commission or other appointment having any emolument or compensation annexed thereto, under this State or the United States * * * shall have a seat in either house of the general assembly; * * * nor shall any member, after having taken his seat, be eligible to any of the aforesaid offices or appointments during the time for which he shall have been elected.

By act of the legislature, February 11, 1799, Georgia declared:

No person shall be a Representative in Congress who shall not have been an inhabitant of the State three years next preceding his election, and paid his tax regularly during that time; nor shall he hold any office of profit under the State or the United States during the time for which he may be elected a Representative.

Section 2 of the same law provided that the governor shall not issue a certificate until satisfactory proof is given by the member elect of residence and payment of tax.

Section 46. No person shall be eligible to represent any of said congressional districts who does not, at the time of his election, reside within said district.

The Revised Code of Georgia of 1867, section 1326, declared that—

Besides the qualifications required by the constitution, a residence of one year next preceding the day of election, in the district where the candidate offers himself, is necessary to make him eligible to election.

Maryland

In 1776, in her bill of rights, Maryland declared as follows:

The independency and uprightness of judges are essential to the impartial administration of justice * * * wherefore no chancellor or judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.

Sec. 32. No person ought to hold, at the same time, more than one office of profit from this State or the United States, without the approbation of this State.

(Re-adopted in 1851, 1864, and 1867)

In the constitution of 1792 was this provision, viz:

That no member of Congress, or person holding any office of trust or profit under the United States, shall be capable of holding a seat in the general assembly, or of being an elector of the senate.

Article 33 of the constitution of 1864 contains the following:

No judge shall hold any other office, civil or military, or political trust or employment of any kind whatsoever, under the constitution or laws of this State, or of the United States, or any of them.

In 1788 the legislature of Maryland passed an act providing—

That every person coming to vote for Representative for the State in Congress * * * shall have a right to vote for six persons, one of whom shall be a resident of each of said districts; and the candidate in each district having the greatest number of votes of all the candidates residing in that district shall be declared to be elected for that district.

It was provided by an act of the legislature in 1790 that—

Every person entitled and offering to vote for Representative in Congress shall have the right to vote for one person, being a resident of his district at the time of the election, and having resided therein twelve calendar months immediately before, and otherwise qualified according to the Constitution of the United States.

When Maryland was divided into eight districts with nine members, in 1802, the act provided that—

The fifth district shall elect two members, one of whom shall be a resident of Baltimore City, and the other of Baltimore County.

(This law is in the revision of 1819.)

The code of 1860, section 74, contains the following:

One the United States Senators shall be always an inhabitant of the eastern, and the other of the western shore.

Massachusetts

Constitution of 1780, article 2, chapter 6:

No governor, lieutenant-governor, or judge of the supreme court shall hold any other office or place except such as by the constitution they are entitled to hold; nor

shall they hold any other place or office from any other State or Government or power whatever.

(This provision is still in the constitution of Massachusetts.)

In 1788 the legislature of Massachusetts passed a law dividing the State into Congressional districts. This law provided that—

One Representative, being an inhabitant of the district for which he shall be elected, shall be chosen in the manner hereinafter described.

(This was the law of 1790, and also of 1794.)

In 1802 the State was divided into seventeen districts, and the same law provided for a member in each district, "being an inhabitant of the district for which he shall be elected."

This feature has been re-enacted in every apportionment in Massachusetts since that date, making residence in the district an additional qualification for a Representative in Congress.

For Presidential electors, the voters in Massachusetts are required by law to vote for one in each Congressional district on a general ticket.

A statute of Massachusetts makes bribery, embezzlement, conviction of felony, or other infamous crime a disqualification for holding any office under the State. This undoubtedly applies to members of Congress and Presidential electors.

New Hampshire

Bill of rights, part 2, section 92:

No governor or judge of the supreme court shall hold any office or place under the authority of this State except such as by this constitution they are admitted to hold:

nor shall they hold any place or office from any other State, Government, or power whatever.

New Jersey

Constitution of 1776, section 20:

None of the judges of the supreme court or other courts shall be eligible to a seat in the general assembly.

The constitution of 1844, article 5, section 8, provides that—

No member of Congress or person holding office under the United States or this State shall exercise the office of governor.

The latter clause was amended by the constitution of 1875, article 7, section 2, to read as follows:

Nor shall he be elected to any office under the government of this State or the United States during the term for which he shall have been elected.

When New Jersey first divided the State into live Congressional districts it was provided in section 4 of the act that there should be elected for the State—

One person in each of the said districts to be a member of the House of Representatives who shall be a citizen of the United States of the age of twenty-five years or upwards, and an inhabitant of the district in which he shall be elected, and who shall have been a citizen of the United States seven years next preceding said election.

New York

Constitution of 1777, section 25:

The chancellor and judges of the supreme court shall not at the same time hold any office except that of delegate to the General Congress upon special occasions.

Article 1, section 11, of the constitution of 1821 provides that—

No person, being a member of Congress or holding any judicial office under the United States shall hold a seat in the legislature.

Section 10 is in these words:

No member of the legislature shall receive any civil appointment from the governor and senate or from the legislature during the term for which he shall have been elected.

(Re-adopted in 1846.)

Article 6, section 8, of the constitution of 1821 contains the following in reference to judges:

They shall not hold any other office of public trust. All votes for them for any other office * * * given by the legislature or the people shall be void.

The constitution of 1869 declares that—

The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for any of them for any other than a judicial office given by the legislature or the people shall be void.

North Carolina

Declaration of rights, part 4:

The legislative, executive, and supreme judicial power of government ought to be forever separate and distinct from each other.

Constitution of 1776, part 35:

No person in this State shall hold more than one lucrative office at any one time.

(Not amended until 1835.)

Article 6, section 1, of the constitution of 1868 required a residence of twelve months for a voter, and

section 4 provided that only qualified voters shall be eligible to office. By section 2, article 14, persons fighting a duel are declared to be ineligible to any office. (This was substantially re-adopted in the constitution of 1878.)

An act of the legislature of North Carolina in 1792 contains the following:

And whereas it is necessary to keep separate and distinct the offices of the Federal Government from those of the State government, be it further enacted that no citizen of this State shall hold at one and the same time any office of trust, profit, or emolument under the authority of the United States and any office or authority, either civil or military, under the authority of this State. Senators and Representatives in Congress are considered as coming within the purview of this law.

In 1802 the State was divided into twelve districts, and the act declared that—

The person elected in each district shall be a resident or inhabitant of that district for which he is elected during the space or term of one year before and at the time of his election.

Pennsylvania

Constitution of 1790, article 1, section 18:

No representative shall during the time for which he shall have been elected to any office in this State, and no member of Congress or other person holding any office under the United States or this State, shall be a member of either house during his continuance in Congress or in office.

Article 5, section 1, referring to judges (re-enacted in 1838):

But they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth.

This was amended in 1850 to read as follows:

Nor hold any other office of profit under this Commonwealth, or under the Government of the United States, or any other State of the Union.

The new constitution of 1873 contains these words:

Nor hold any other office of profit under the United States, this State, or any other State.

Rhode Island

This State adopted her first constitution in 1842. Article 2, section 1, requires as a qualification for suffrage one year's residence and real estate of the value of $134 above all encumbrances.

Article 9, section 1, provides that—

No person shall be eligible to any civil office * * * unless he be a qualified elector for such office.

South Carolina

Constitution of 1778, article 8:

No person in this State shall hold the office of governor thereof, or lieutenant-governor, and any other office or commission, civil or military, * * * either in this or any other State, or under the authority of the Continental Congress, at one and the same time.

Article 1, section 21, of the constitution of 1790 declares that—

No person shall be eligible to a seat in the legislature whilst he holds any office of profit or trust under this State, the United States, or either of them.

Article 3, section 1:

The judges shall hold their commissions during good behavior, * * * nor hold any office of trust or profit in this State, the United States, or any of them.

In 1865 this clause was amended to read:

Nor hold any other office of profit or trust under this State, the United States of America, or any other power.

(Readopted in 1868.)

Virginia

Constitution of 1830, article 2:

The legislative, executive, and judiciary departments shall be separate and distinct, * * * nor shall any person exercise the power of more than one of them at the same time.

Article 5, section 1:

The judges of the supreme court of appeals and of the superior court shall hold their offices during good behavior, * * * and shall, at the same time, hold no other office, appointment, or public trust.

The constitution of 1850, article 15, section 15, provides that—

No judge, during this term of service, shall hold any other office, appointment, or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during such term or within one year thereafter, be eligible to any political office he, during such term or within one year thereafter, be eligible to any political office.

(Re-adopted in 1864.)

Article 6, section 24 of the constitution of 1870, provides that:

Judges of the supreme court of appeals and judges of the circuit courts shall not hold any other office or public trust during their continuance in office.

The legislature of Virginia, composed of the same men who ratified the Federal Constitution, passed a law dividing the State into ten districts, declaring that:

The persons qualified by law to vote for members of the house of delegates in each county composing a district, shall assemble at their respective county courthouses on the second day of February next, and then and there vote for some discreet and proper person, being a freeholder, and who shall have been a bona fide resident for twelve months within said district, as a member to the House of Representatives for the United States.

(The same provision is in the act of December 26, 1799, making a new apportionment of nineteen members.)

Constitutions Of Other States

The following are the provisions in the constitutions of the other States respecting qualifications of members of Congress, etc.

Alabama

Constitution of 1819, article 5, section 11:

Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this State, the United States, or any other power.

The constitution of 1850, article 5, section 10, provided that—

The judges of the supreme court, circuit courts, and courts of chancery shall, at stated times, receive for their services a compensation which shall be fixed by law, and which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any office of profit or trust under this State, the United States, or any other power.

This was amended in 1867 to read:

Nor hold any office (except judicial offices) of profit or trust under this State, or the United States, during the term for which they have been elected, nor under any power during their continuance in office.

(The same provision is in the constitution of 1875.)

Arkansas

Constitution of 1836, article 5, section 5, under the head of "executive," provides as follows:

He shall, at stated times, receive a compensation for his services which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive within that period any other emolument from the United States, or any of them, or from any other power.

(Same in constitution of 1864.)

In article 6, section 8, of the constitution of 1836 is the following in relation to judges of the supreme and circuit courts (retained in the constitution of 1861):

Nor hold any other office of trust or profit under this State or the United States.

The constitution of 1868 has the following:

The officers of the executive department and judges of the supreme court shall not be eligible, during the period for which they may be elected or appointed to their respective offices, to any position within the gift of the qualified electors or of the general assembly of the State.

The constitution of 1874 declares, in reference to supreme court judges:

Nor hold any other office of trust or profit under this State or the United States.

California

Constitution of 1849, article 6, section 16.

The justices of the Supreme Court and district judges shall be ineligible to any other office during the term for which they shall have been elected.

In 1862 this was amended to read as follows:

The justices of the Supreme Court and district judges and the country judges shall be ineligible to any other office during the term for which they shall have been elected.

Colorado

Constitution of 1876, article 5, section 8:

No senator or representative shall during the time for which he shall have been elected, be appointed to any civil office under this State; and no member of Congress or other person holding any office (excepting attorney at law, notary public, or the militia) under the United States or this State, shall be a member of either house during his continuance in office.

(It is provided also in this Constitution that no person shall hold any office who is not a qualified voter.)

Florida

1838. Article 5, section 5:

* * * But the judges shall receive no fees or perquisites of office, not hold any other office or profit or trust under this State, the United States, or any other power.

In the constitution of 1865 are these words:

Nor hold any other office of profit or trust under this State, the United States, or any other power.

The constitution of 1868, article 17, section 23, provides that—

The governor, or any other State officer, is hereby prohibited from giving certificates of election, or other credentials, to any person having been elected to the House of Representatives of the United States Congress or the United States Senate who has not been two years a citizen of the State and nine years a citizen of the United States, and a resident voter.

Illinois

1818. Article 2, section 25:

No judge of any court of law or equity * * * member of either House of Congress * * * shall have a seat in the general assembly.

Constitution of 1848, article 6, section 7:

No person shall be elected or appointed to any office in this State, civil or military, * * * who shall not have resided in this State one year next before his election or appointment.

Section 10 provides that—

The judges of the supreme and circuit courts shall not be eligible to any other office of public trust or profit in this State or the United States during the term for which they are elected, nor for one year thereafter. All votes for either of them for any elective office * * * given by the general assembly or the people shall be void.

Indiana

1857. Article 7, section 15:

No person elected to any judicial office shall, during the term for which he shall be elected, be eligible to any office of trust or profit under the State, other than a judicial office.

Iowa

1816. Article 5, section 3:

The judges of the supreme court shall be ineligible to any other office in the State during the term for which they shall have been elected.

Under the constitution of the same date the district judges were declared to be "ineligible to any other office, except that of supreme judge, during the term for which they shall have been elected." And in the constitution of 1851 it is provided that—

The judges of the supreme court shall be ineligible to any other office during the term for which they shall have been elected.

Kansas

Topeka constitution of 1855. In reference to judges—

Nor hold any other office of profit or trust under the State, other than a judicial office.

The Lecompton constitution of 1857 contained the following on the same subject:

Nor hold any other office of profit or trust under this State, the United States, or either of the other States, or any power, during their continuance in office.

In the Leavenworth constitution of 1858 is this provision:

Nor hold any office of profit or trust under the State, other than a judicial office.

The Wyandotte constitution of 1859, under which Kansas was admitted into the Union, provides as follows in reference to judges:

Nor hold any other office of profit or trust under the authority of the State or the United States, during the term of office for which such justices and judges shall be elected.

Kentucky

1792. Article 1.

No member of Congress or other person holding any office of profit or trust under the United States or this Commonwealth * * * shall be a member of the House during his continuance to act as a member of Congress or in such office.

In the constitution of 1850 is the following:

No member of Congress, or person holding or exercising any office of trust or profit under the United States or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this Commonwealth, or hold or exercise any office of trust or profit under the same. (Art. 8, sec. 25.)

Louisiana

1812. Article 6, section 14 (re-adopted in the constitutions of 1845, 1852, and 1864):

No member of Congress, or person holding or exercising any office of profit or trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this State, or hold or exercise any office of trust or profit under the same.

Article 39, title 3, of the constitution of 1852 provides (re-adopted in 1864 and 1868):

No member of Congress or person holding any office under the United States, shall be eligible to the office of governor or lieutenant-governor.

The constitution of 1868 declares that—

No person shall hold or exercise at the same time, more than one office of trust or profit, etc.

Maine

1820. Article 4, part 3, section 11:

No member of Congress or person holding any office under the United States, or office of profit under this State, shall have a seat in either house during his being such member of Congress, or his continuing in such office.

Article 5, section 5:

No person holding any office or place under the United States, this State, or any other power, shall exercise the office of governor.

Article 6, section 6:

The justices of the supreme judicial court shall not hold any office under the United States, nor any State, nor any other office under this State, except that of justice of the peace.

Michigan

1833. Article 6, section 2 (referring to judges):

But they shall receive no fees * * * nor hold any office or profit or trust under the authority of this State or the United States.

The constitution of 1850 provides as follows:

No person elected a member of the legislature shall receive any civil appointment within this State, or to the Senate of the United States, from the governor, the governor and senate, from the legislature, or any State authority, during the term for which he is elected or appointed, and all votes given for any person so elected or appointed shall be void. (Art. 4, sec. 18.)

But no judge of the supreme court or circuit court shall exercise any other power or appointment to public office. (Art. 6, sec. 10.)

Minnesota

1857. Article 6, section 11:

The justices of the supreme court and the district courts shall hold no office under the United States nor any other office under this State, and all votes for either of them for any elective office under this constitution, except a judicial office, given by the legislature or the people, during their continuance in office, shall be void.

Mississippi

1817. Article 6, section 15:

No member of Congress, nor any person holding any office of profit or trust under the United States, or either of them * * * or under any foreign power, shall hold or exercise any office of profit or trust under this State.

(Re-adopted in 1832 and 1868.)

Missouri

1820. Article 3, section 11:

No judge of any court of law or equity * * * member of Congress, or other person holding any lucrative office under the United States or this State, * * * shall be eligible to either house of the general assembly.

The constitution of 1822, article 1, section 4, declares that—

No person holding an office of profit under the United States and commissioned by the President, shall, during his continuance in such office, be eligible, appointed, hold, or exercise any office of profit under this State.

By the constitution of 1865, article 4, section 11, it is provided—

That no member of Congress, or person holding any lucrative office under the United States, * * * shall be eligible to either house of the general assembly.

(Re-adopted in 1875.)

Article 8, section 12, of the constitution of 1875, says:

No person shall be elected or appointed any office in this State, civil or military, who is not a citizen of the United States and who shall not have resided in this State one year next preceding his election or appointment.

Nebraska

1866-67. Article 2, section 14:

No person, being a member of Congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature.

The same constitution declares that—

No person holding office under authority of the United States * * * shall be eligible to have a seat in the legislature. (Art. 3, sec. 6.)

No person elected to the legislature shall receive any civil appointment within this State from the governor and senate during the term for which he has been elected. (Art. 3, sec. 13.)

Nevada

1864. Article 4, section 9:

No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State.

Article 6, section 11:

Justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected; and all elections or appointment of any such judges, by the people, the legislature, or otherwise, during said period, shall be void.

Ohio

1802. Article 3, section 8 (concerning the judges):

But they shall receive no fees or perquisites of office nor hold any other office of profit or trust under the authority of this State or the United States.

The constitution of 1851 contains the following:

Nor hold any other office of profit or trust under the authority of this State or the United States. All votes for either of them for any elective office, except a judicial office, under the authority of this State, given by the general assembly or the people, shall be void.

Oregon

1857. Article 2, section 9:

Every person who shall give or accept a challenge to fight a duel, or shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

Section 10:

No person holding a lucrative office or appointment under the United States or this State shall be eligible to a seat in the general assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly provided.

Article 7, section 21:

Every judge of the supreme court, before entering upon the duties of his office, shall take and subscribe and transmit to the secretary of state the following oath: "I, ———— ————, do solemnly swear . . . that I will not accept any other office, except judicial offices, during the term for which I have been elected."

Texas

1845. Article 7, section 13:

No member of Congress, nor person holding or exercising any office of profit or trust under the United States or either or them, or under any foreign power, shall be eligible as a member of the legislature, or hold or exercise any office of profit or trust under this State.

Sec. 26: No person shall hold office or exercise, at the same time, more than one civil office of employment.

(Re-adopted in 1870.)

Tennessee

1796. Article 5, section 3:

The judges of the supreme court shall at stated times receive a compensation for their services, to be ascertained by law, and shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust of profit under this State or the United States.

(This was re-adopted in the constitutions of 1834 and 1870.)

Vermont

1786. Chapter 2, section 27:

No person who holds any office in the gift of Congress shall, during the time of his holding such office, be elected to represent this State in Congress.

The constitution of 1793, Article 2, section 26, provides that—

No person in this State shall be capable of holding or exercising more than one of the following offices at the same time, viz: Governor, Lieutenant governor, judges of the supreme court; . . . nor shall any person holding any office of profit or trust under the authority of Congress be eligible to any appointment in the legislature or of holding any executive or judicial office under this State.

West Virginia

1861-63. Article 6, section 12:

No judge, during his term of office, shall hold any other office, appointment, or public trust under this or any other government, and the acceptance thereof shall vacate his judicial office; nor shall he, during his continuance therein, be eligible to any political office.

Wisconsin

1848. Article 13, section 3:

No member of Congress, nor any person holding any office of profit or trust under the United States . . . or under any foreign power, no person convicted of any infamous crime in any court within the United States, and no person being a defaulter to the United States, or to this State, or to any county or town therein, or to any State or Territory within the United States, shall be eligible to any office of trust, profit, or honor in this State.

APPENDIX D

Contemporary Term Limits on Governors or Executive Officers

The following states do not impose term limits on their legislators or members of Congress, but they do limit the terms of the governor or other state officials in the executive branch:

State	*Constitutional Provision*
Alabama	Ala. Const. art. V, § 116 (1901 & Supp. 1993) (governor, lieutenant governor, attorney general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries cannot succeed himself or herself)[1]
Alaska	Alaska Const. art. III, § 5 (1993) (governor who has served two consecutive terms may not run until one term has intervened)
Delaware	Del. Const. art. III, § 5 (1897 & Supp. 1992) (governor may not serve third term)
Georgia	Ga. Const. art. V, § 1, ¶ 1 (1982 & Supp. 1994) (governor limited to two consecutive terms, but may run after one term has intervened)
Hawaii	Hawaii Const. art. V, §§ 1, 2 (1985 & Supp. 1993) (governor and lieutenant governor can serve no more than two consecutive terms)

[1] Under this same constitutional provision, the governor of Alabama is not eligible for the United States Senate during his or her term, nor within one year after the expiration thereof. That provision appears to impose an additional qualification for federal office.

Indiana	Ind. Const. art. V, § 1 (1851 & Supp. 1994) (governor may not serve more than eight years in any period of 12 years)
Kansas	Kansas Const. art. I, § 1 (1859 & Supp. 1993) (no more than two successive terms as governor or lieutenant governor)
Kentucky	Ky. Const. § 71 (1891 & Supp. 1992) (governor ineligible for succeeding four years after the expiration of current term); § 82 (same for lieutenant governor); § 93 (same for treasurer, auditor of public accounts, secretary of state, commissioner of agriculture, labor, and statistics, attorney general, superintendent of public instruction, and register of the land)
Louisiana	La. Const. art. 4, § 3(B) (1974 & Supp. 1994) (governor cannot serve term following two successive terms)
Maryland	Md. Const. art. II, § 1 (1867 & Supp. 1993) (governor cannot serve term following two consecutive terms)
Mississippi	Miss. Const. art. V, § 116 (1890 & Supp. 1993) (governor cannot be his or her own immediate successor)
Nevada	Nev. Const. art. 5, § 3 (1864 & Supp. 1993) (no person can be elected governor more than twice)
New Jersey	N.J. Const. art. 5, § 1, ¶ 5 (1947 & Supp. 1994) (governor must let term intervene after serving two consecutively)

New Mexico	N.M. Const. art. V, § 1 (1911 & Supp. 1994) (governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and commissioner of public lands who have served two consecutive terms cannot serve again until one full term has intervened); see also art. X, § 2 (same term limits for county officers)
North Carolina	N.C. Const. art. III, § 2(2) (1970 & Supp. 1993) (neither governor nor lieutenant governor can serve more than two consecutive terms of same office)
Pennsylvania	Penn. Const. art. IV, § 3 (1874 & Supp. 1994) (governor eligible to succeed himself or herself for one additional term)
Rhode Island	R.I. Const. art. IV, § 1 (1986 & Supp. 1993) (governor, lieutenant governor, secretary of state, attorney general, general treasurer cannot serve consecutively in same general office for more than two full terms)
South Carolina	S.C. Const. art. IV, § 3 (1895 & Supp. 1993) (governor cannot serve more than two consecutive terms)
Tennessee	Tenn. Const. art. 3, § 4 (1870 & Supp. 1993) (governor can serve no more than two consecutive terms)
Virginia	Va. Const. art. V, § 1 (1971 & Supp. 1994) (governor cannot serve consecutive terms)
West Virginia	W.V. Const. art. VII, § 1 (1872 & Supp. 1994) (governor cannot serve more than two consecutive terms)

APPENDIX E

Contemporary Term Limits for the Governor, the State Legislature, and Members of the United States Congress

In addition to Arkansas, the following states have imposed term limits on their governors, state legislators, and members of Congress.

State	*Constitutional or Statutory Provision*
Arizona	Ariz. Const. art. V, § 1 (1910 & Supp. 1993) (governor, secretary of state, state treasurer, attorney general, and superintendent of public instruction cannot serve more than two consecutive terms); art. IV, pt. 2 § 21 (no state senator nor any state representative shall serve more than four consecutive terms in one office); art. VII, § 18 (U.S. Senate candidates from Arizona cannot have name on ballot if they have served two consecutive terms; U.S. House candidates cannot have name on ballot if they have served three consecutive terms). For all term limits only terms after January 1, 1993, will be considered. Candidates ineligible for an election or ballot appearance because of term limits may run again for the same office only if one full term has intervened.
California	Calif. Const. art. V, § 2 (1879 & Supp. 1994) ("No Governor may serve more than two terms"); art. V, § 11 ("No Lieutenant Governor, Attorney General, Controller, Secretary of State, or Treasurer may serve in the same office for more than two terms"); art. IV, § 2 (no

	state senator may serve more than two four-year terms; no member of the state assembly may serve more than three two-year terms); Cal. Elections Code Ann. § 25003 (1961 & Supp. 1994) (restricting access to ballot of any candidate for U.S. Representative who has served in the House for six of the previous 11 years and any candidate for U.S. Senate who has served in the Senate for 12 of the past 17 years).
Colorado	Colo. Const. art. IV, § 1 (1973 & Supp. 1993) (governor, lieutenant governor, secretary of state, state treasurer, and attorney general cannot serve more than two consecutive terms in the same office); art. V, § 3 (state senators cannot serve more than two consecutive terms in the senate, and state representatives cannot serve more than four consecutive terms in the house); art. XVIII, § 9a (no U.S. Senator from Colorado shall serve more than two consecutive terms in the Senate, and no U.S. Representative shall serve more than six consecutive terms in the House). All of the above term limits apply only to terms beginning on or after January 1, 1991, and are considered consecutive unless they are four years apart.
Florida	Fla. Const. art. IV, § 5 (1968 & Supp. 1994) (no person who has served as governor for more than six years in two consecutive terms shall be elected governor for the succeeding term);[1] art. VI,

[1] The 1885 and 1938 Florida constitutions limited the governor to only one four-year term, although the governor could run again

§ 4(b) (no person may appear on the ballot for re-election to any of the following offices if, by the end of the current term of office, the person will have served in that office for eight consecutive years: state representative, state senator, lieutenant governor, any office of the Florida cabinet, U.S. Representative, or U.S. Senator).

Michigan — Mich. Const. art. V, § 30 (1963 & Supp. 1994) (no person shall be elected more than twice to each of the following offices: governor, lieutenant governor, secretary of state, or attorney general); art. IV, § 54 (state representatives may not serve more than three times; state senators may not serve more than twice); art. II, § 10 (U.S. Representatives may not serve more than three times in any 12-year period; U.S. Senators may not serve more than two times in any 24-year period). All of these term limits count only terms beginning on or after January 1, 1993.

Missouri — Mo. Const. art. IV, § 17 (1945 & Supp. 1994) (no person shall be governor or treasurer twice); art. III, § 8 (no one shall be elected or appointed to serve more than eight years total in any one house of the General Assembly, nor more than 16 years total in both houses of the General Assembly); art. III, § 45 (a) (no U.S. Senator from Missouri shall serve more than two terms in the Senate; no U.S. Representative shall

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if one full term had intervened. Fla. Const. art. IV § 5 (commentary) (1968 & Supp. 1994).

serve more than four terms in the House. Section 45(a) becomes effective whenever at least one-half of the states enact term limits for their members of Congress).

Montana — Mont. Const. art IV, § 8 (1889 & LEXIS 1994) (governor and state legislators limited to eight years in any 16-year period; U.S. Representatives limited to six years in any 12-year period; U.S. Senators limited to 12 years in any 24-year period).

Nebraska — Nebr. Const. art. IV, § 1 (1875 & Supp. 1993) (governor limited to two terms); art. IV, § 3 (lieutenant governor, secretary of state, auditor of public accounts, treasurer, attorney general, and members of the public service commission are ineligible to file for reelection and ineligible to serve in their respective offices "for a number of years equal to the term for which they were last elected next after the expiration of the second of two consecutive terms for which they were previously elected after the general election"); art. III, § 8 ("No person shall be eligible to file for election to or to serve as a member of the Legislature for a period of four years after the expiration of the second of two consecutive terms for which they were previously elected"); art. XV, § 20 (U.S. Representative may not appear on the ballot to seek a fifth consecutive term; U.S. Senator may not appear on the ballot for a third consecutive term; neither may be listed on an official ballot for a period of years equal

to the number of years in the term for which that person was last elected as a Representative in Congress or as a Senator).[2]

Ohio — Ohio Const. art III, § 2 (1851 & Supp. 1993) (governor, lieutenant governor, secretary of state, treasurer of state, attorney general and auditor of state shall not hold office longer than two successive terms of four years; for all officers except the governor, only terms beginning on or after January 1, 1995, count); art. II, § 2 (no person shall hold the office of state senator for a period of longer than two consecutive terms of four years; no person shall hold the office of state representative for a period of longer than four successive terms of two years; only terms beginning on or after January 1, 1993, will be considered); art. V, § 8 (U.S. Senators limited to two successive terms; U.S. Representatives limited to four successive terms; terms considered successive unless four years have intervened; and only terms beginning January 1, 1993, are considered).

Oregon — Ore. Const. art V, § 1 (LEXIS 1994) (governor limited to eight years in a 12-year period); art. II, § 19 (members of Oregon legislative assembly limited to serving 12 years; Oregon senators and holders of statewide office limited to serving eight years; members of Oregon house limited to six years); art. II, § 20

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[2] The amendments to the Nebraska Constitution imposing term limits were recently invalidated due to a defect in the initiative process. *Duggan* v. *Beermann*, 515 N.W.2d 788 (Neb. 1994).

(U.S. Representatives limited to serving six years; U.S. Senators limited to serving 12 years).

South Dakota — S.D. Const. art. IV, § 2 (1889 & Supp. 1994) (no person shall be elected to more than two consecutive terms as governor or as lieutenant governor); art. IV, § 7 (beginning with 1992 election, no person may be elected to more than two consecutive terms as attorney general, secretary of state, auditor, treasurer, or commissioner of school and public lands); art. III, § 6 (no person may serve more than four consecutive terms or a total of eight consecutive years in the state senate or house of representatives; this restriction does not apply to terms before January 1, 1993); art. IV, § 32 (commencing with 1992 election, no person may be elected to more than two consecutive U.S. Senate terms nor more than six consecutive U.S. House terms).

Washington — Wash. Rev. Code Ann., § 43.01.015 (1984 & Supp. 1994) (no person is eligible to appear on the ballot or file a declaration of candidacy for governor or lieutenant governor if he or she has served in the same office for eight of the previous 14 years); § 44.04.015 (no person is eligible to appear on the ballot or file a declaration of candidacy if he or she is one of the following: (i) a state house of representatives candidate who has served in the house during six of the previous 12 years; (ii) a state senate candidate who has served in the senate eight of the previous 14 years; (iii) a

candidate for the legislature who has served as a member of the legislature for 14 of the past 20 years); § 28.68.015 (no person is eligible to appear on the ballot or file a declaration of candidacy for the U.S. House if he or she has served in the U.S. House for six of the previous 12 years); § 28.68.016 (no person is eligible to appear on the ballot or file a declaration of candidacy for the U.S. Senate if he or she has served in the Senate for 12 of the previous 18 years).

Wyoming — Wyo. Stat. Ann., § 22-5-103 (1977 & Supp. 1993) (candidate may not be elected or serve in same office if (i) he or she has served eight or more years in any 16 years in the office of governor, secsecretary of state, state auditor, state treasurer, and state superintendent of public instruction; (ii) he or she has served six years in any 12-year period as state representative; (iii) he or she has served 12 years in any 24-year period as state senator); § 22-5-104 (nomination applications for same office will not be accepted for any person who has served 12 or more years in any 24-year period as U.S. Senator or for any person who has served six or more years in any 12-year period in the U.S. House). All of the term limits count only terms served after January 1, 1993.

APPENDIX F

States Presently With Term Limits, but Not for All Positions

The following states have term limits only for certain positions:

1. Federal term limits:

North Dakota does not limit the terms of its governor or state legislators, but it does restrict its Members of Congress. N.D. Century Code § 16.1-01-13 (1960 & Supp. 1993) (making person permanently ineligible to have name on the ballot for office of U.S. Senator or Representative in Congress "if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years").[1]

2. State term limits:

Oklahoma does not limit its members of Congress, but it does impose term limits on state officials and legislators. Okla. Const. art. VI, § 4 ("No person shall be elected Governor more than two times in succession"); art. V, § 17A (any member of the state legislature elected after 1990 is eligible to serve no more than 12 years in the state legislature).

3. Term limits for the governor and legislative leaders:

Maine limits the terms of its governor. It does not impose general term limits on state legislators, but it does restrict the terms of the senate president, house speaker, and floor leaders. Maine Const. art. V, § 3 (1983 &

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[1] North Dakota also enacted § 16.1-01-13.1, which becomes effective only if § 16.1-01-13 is held unconstitutional and provides that "the disqualification imposed by this section ceases after two years have elapsed since the disqualification last affected that person's eligibility for placement on the ballot."

Supp. 1993) (person who has served two consecutive terms as governor is ineligible to succeed himself or herself); Maine Rev. Stat. § 3-21-A (Supp. 1993) (no more than three consecutive legislative bienniums as president of state senate); § 3-24 (same for senate floor leaders); (§ 3-41-A) (same for speaker of the state house of representatives); § 3-44 (same for house floor leaders).

APPENDIX G

States Without Term Limits for Any State or Federal Officers

The following states currently do not have term limits for any elected officials: Connecticut, Idaho, Illinois, Iowa, Massachusetts, Minnesota, New Hampshire, New York, North Dakota,[1] Texas,[2] Utah, Vermont, and Wisconsin.

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[1] North Dakota, however, does impose term limits on its representatives to Congress.

[2] The Texas Constitutions of 1845, 1861, and 1866 all limited the governor from serving more than two consecutive terms. That limitation was dropped in 1876. Tex. Const. art. IV, § 4 (Interpretive Commentary) (1876 & Supp. 1994).

APPENDIX H

Municipalities With Term Limits on Local Officers

The following cities have imposed term limits on the mayor, city council members, or other local officials. See Erica Gould, *The Municipal Term Limits Groundswell*, U.S. Term Limits Outlook Series Vol. II, No. 3, at 2-16 (Aug. 1993).

1. ALASKA

Anchorage, Juneau, Ketchikan

2. Arizona

Fountain Hills, Goodyear, Mesa, Phoenix

3. CALIFORNIA

Alameda, Alhambra, Anaheim, Acadia, Chula Vista, Dana Point, Fresno, Hillsborough, Huntington Beach, Irvine, Long Beach, Los Altos, Los Angeles, Merced, Newport Beach, Pacific Grove, Palo Alto, Renondo Beach, Riverside County, Roseville, San Diego, San Francisco, San Jose, San Juan, Bautista, San Leandro, San Luis Obispo, San Mateo, Santa Ana, Santa Barbara, Santa Clara, Santa Cruz, Seal Beach, Stockton, Sunnwale, Vallejo, Villa Park, Watsonville, Yorba Linda

4. COLORADO

Avon, Colorado Springs, Englewood, Fountaun, Frisco, Greenwood Village, Littleton, Vail, Wheat Ridge

5. CONNECTICUT

Stratford

6. DELAWARE

Wilmington

7. FLORIDA

Auburndale, Boynton Beach, Cape Coral, Daytona Beach Shores, Deerfield Beach, Destin, Fort Walton Highland Beach, Jacksonville, Jacksonville Beach, Kenneth City, Maitland, Miami Springs, Neptune Beach, New Port Richey, North Port, Oakland Park, Oldsmar, Orange Park, Palm Bay, Port Orange, St. Petersburg, Satellite Beach, South Pasadena, Tamarac, Tampa, Targon Springs, Venice, Winter Park

8. GEORGIA

Augusta, Atlanta, Savannah, Telfar County

9. HAWAII

Honolulu

10. ILLINOIS

Brookfield, Riverside, Springfield, Wilmette

11. INDIANA

Henry County

12. KANSAS

Mission Hills, Wichita

23. KENTUCKY

Frankfort, Lexington, Louisville

14. LOUISIANA

Berwick, New Orleans, Shreveport

15. MAINE

Augusta, Bangor, Dexter, Falmouth, Mars Hill, Skowh gan, South Portland, Standish, Van Buren

16. MARYLAND

Annapolis, Anne Arundel County, Cecil County, Howard County, Prince George's County, Rockville, University Park

17. MASSACHUSETTS

Methuen, Provincetown, Stow

18. MICHIGAN

Bay City, Cheboygan, East Grand Rapids, Essexville, Hart, Imlay City, Ishpeming, Marquette, Niles, Owosso, Plymouth, Rockwood, South Haven, Whitehall, Yarmouth

19. MINNESOTA

Rochester

20. MISSOURI

Creve Coeur, Jefferson City, Kansas City, Kirkwood

21. MONTANA

Billings, Hardin

22. NEW HAMPSHIRE

Claremont, Conway, Dover, Hooksett

23. NEW YORK

East Rockaway, Glens Falls, Cuba, New York City, Syracuse

24. NORTH DAKOTA

Fargo

25. OHIO

Cincinnati, Euclid, Fairborn, Fairfield, Geneva, Madiera, Mayfield Heights, Oberlin, Oxford, Richfield, Sandusky, Tipp City, Upper Arlington

26. OKLAHOMA

Del City, Euclid, Kingfisher, Midwest City, Stillwater

27. OREGON

Baker City, Florence, Hillsboro, Lake Oswego, Milwaukee, Oregon City, Philomath, Seaside, Stayton, Sutherlin, Tigard

28. PENNSYLVANIA

Ferguson, Murrysville, Monroeville, Philadelphia, Plymouth, Upper Providence, Whitemarsh

29. TENNESSEE

Nashville

30. TEXAS

Alvin, Ballinger, Bellaire, Bridge City, Brownfield, Cooper's Cove, Dallas, Del Rio, Denison, Denton, El Paso, Flower Mound, Frisco, Galveston, Garland, Graham, Greenville, Highland Park, Highland Village, Houston, Jasper, Katy, Killeen, Kirby, Laredo, Marble Falls, Mercedes, Nassau Bay, New Braunfels, Pasadena, Pearland, Port Aransas, Rockwall, Rowlett, San Antonio, Seabrook, Sherman, Southlake, Sugar Land, Tyler, University Park, Wichita Falls

31. UTAH

Smithfield

32. WASHINGTON

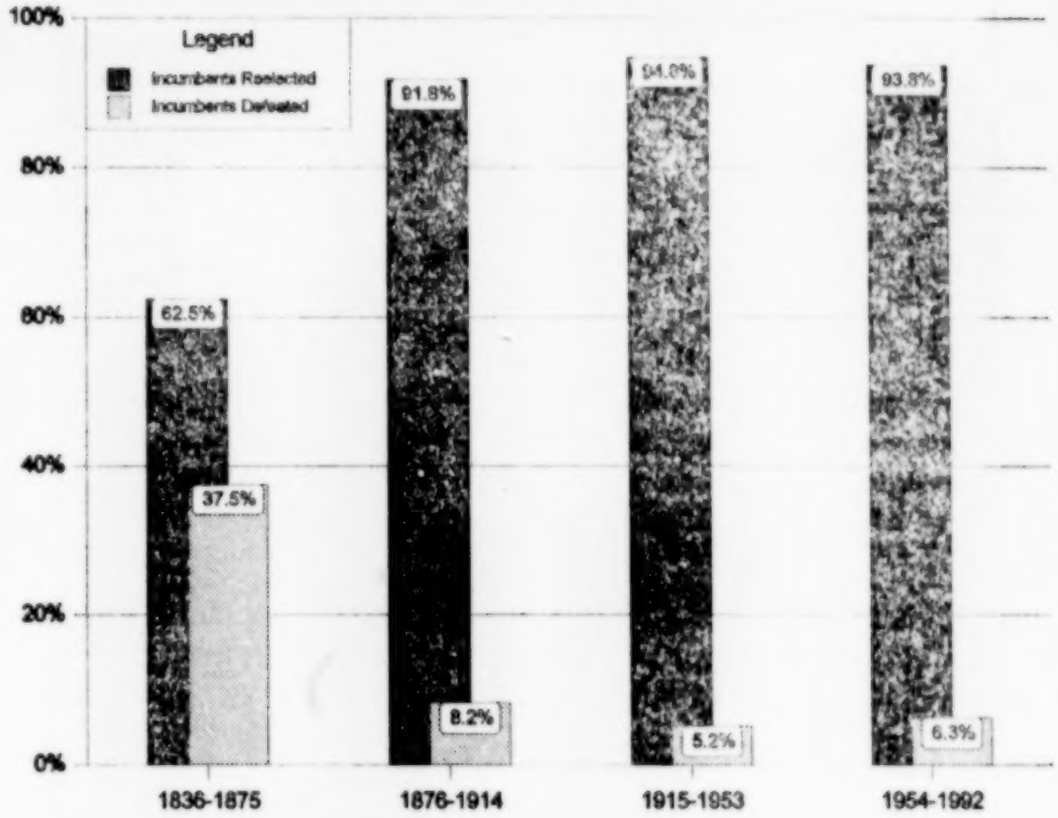
Medina, Port Angeles, Tacoma

33. WEST VIRGINIA

Barboursville

APPENDIX I

Incumbent Reelection Rates of U.S. Representatives from the State of Arkansas Since Statehood



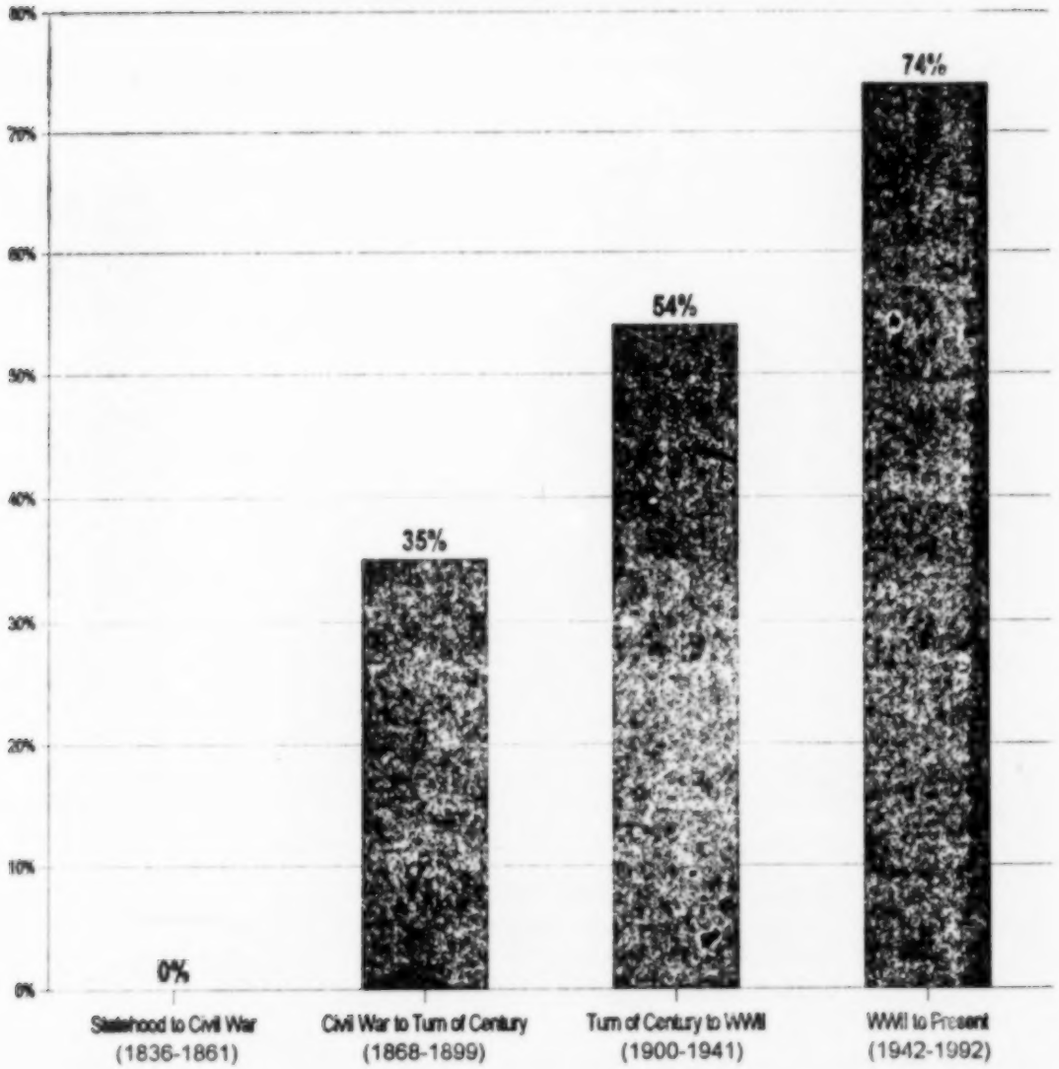
Source: Term Limits Legal Institute from Official Records of the Office of the Secretary of State of Arkansas and *Biographical Directory of the U.S. Congress, 1774-1989*, U.S. Congress Joint Committee on Printing.

Quartile	Ran	Lost	Won
1st: 1836-1875	16	6 (37.5%)	10 (62.5%)
2nd: 1876-1914	97	8 (8.2%)	89 (91.8%)
3rd: 1915-1953	115	6 (5.2%)	109 (94.8%)
4th: 1954-1992	80	5 (6.3%)	75 (93.8%)
Total:	**308**	**25 (8.1%)**	**283 (91.5%)**

Note: Arkansas' U.S. Senate incumbents have won 90.9% of their races since direct election of senators, having lost only twice in primaries. *Not one has lost a general election.*

2i

Percentage of U.S. House Incumbents from Arkansas Serving More Than Three Consecutive Terms



Source: Official Records of the Arkansas Secretary of State's Office and *Biographical Directory of the U.S. Congress, 1774-1989*, U.S. Congress Joint Committee on Printing, 1989.

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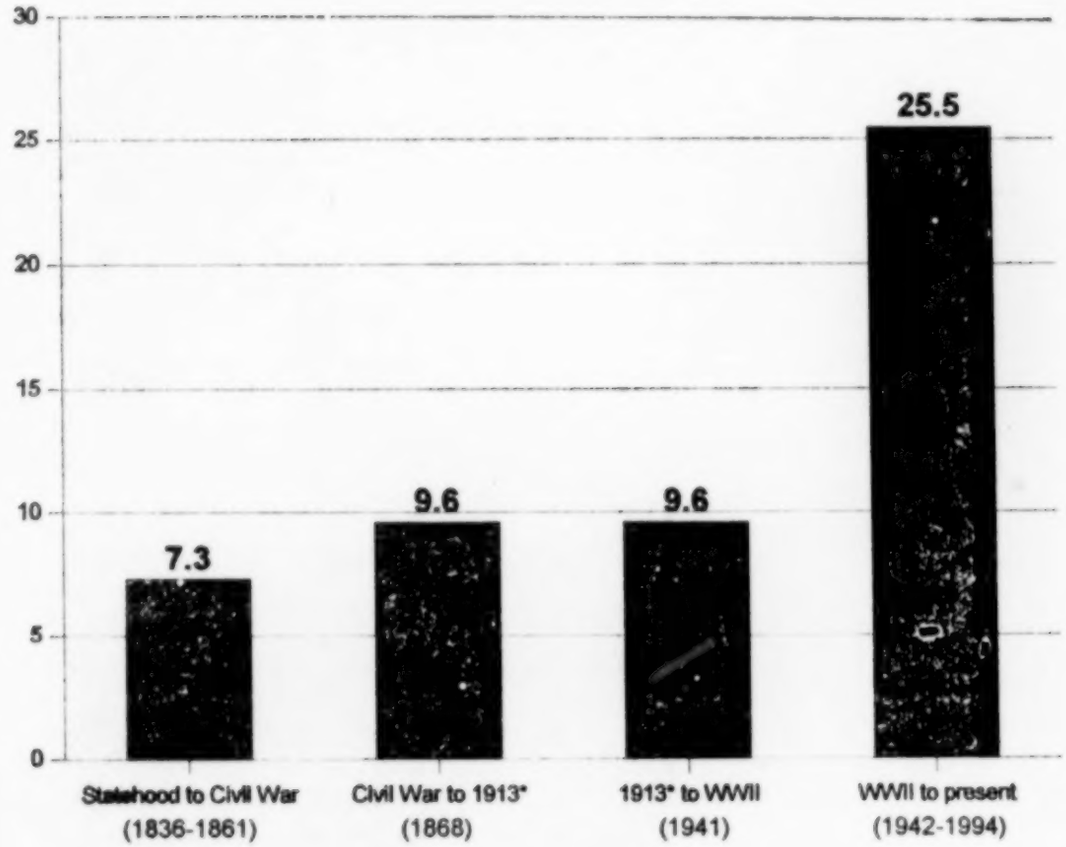
Average Years Served by Arkansas' U.S. Senators Since Statehood †



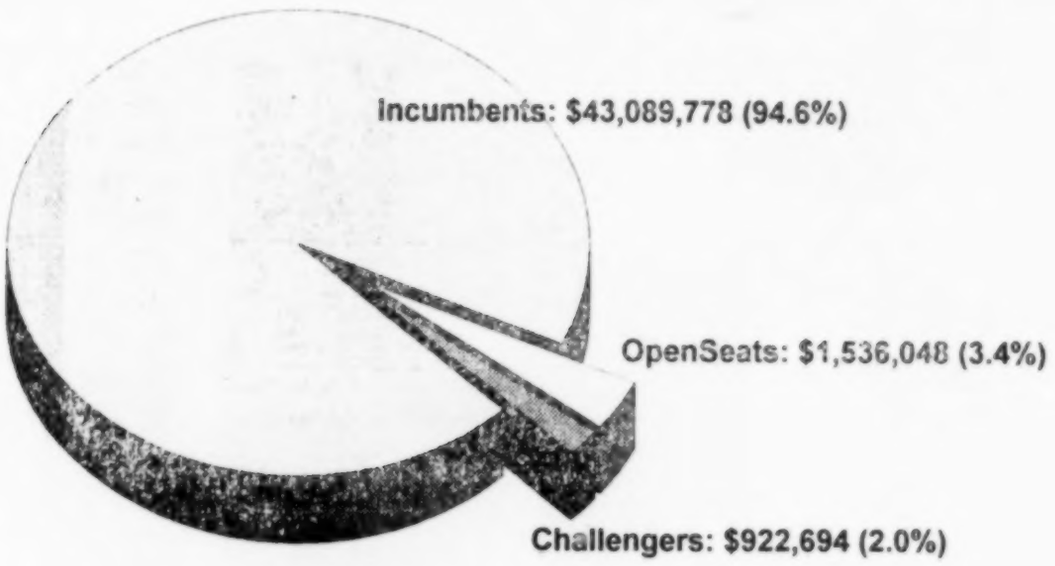
† Includes every Senator seated by Congress including those appointed or elected to fill a vacancy.

* Began direct elections pursuant to Seventeenth Amendment.

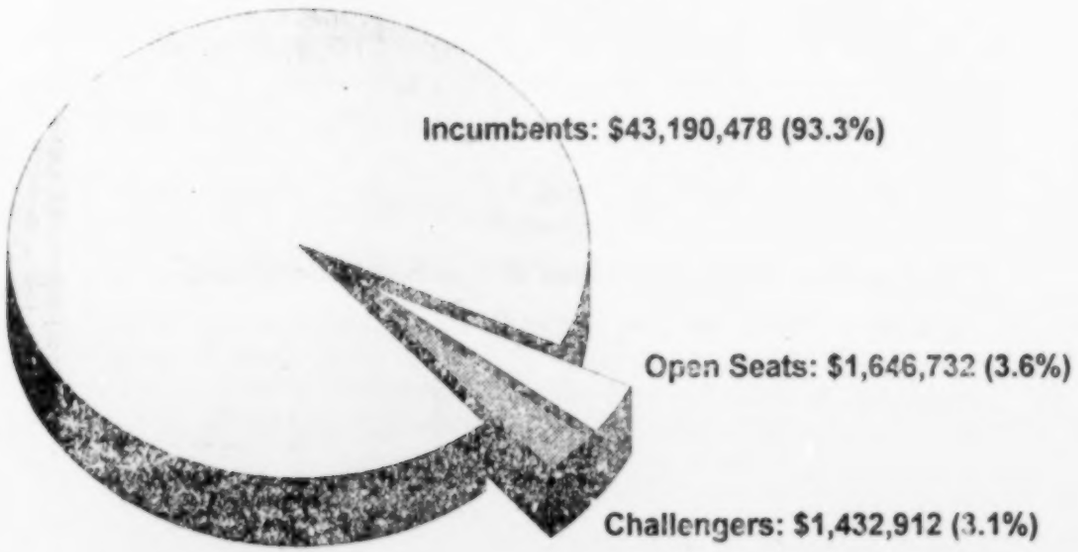
Sources: Official Records of the Office of the Arkansas Secretary of State.

PAC Contributions to U.S. House Candidates

Current Election Cycle



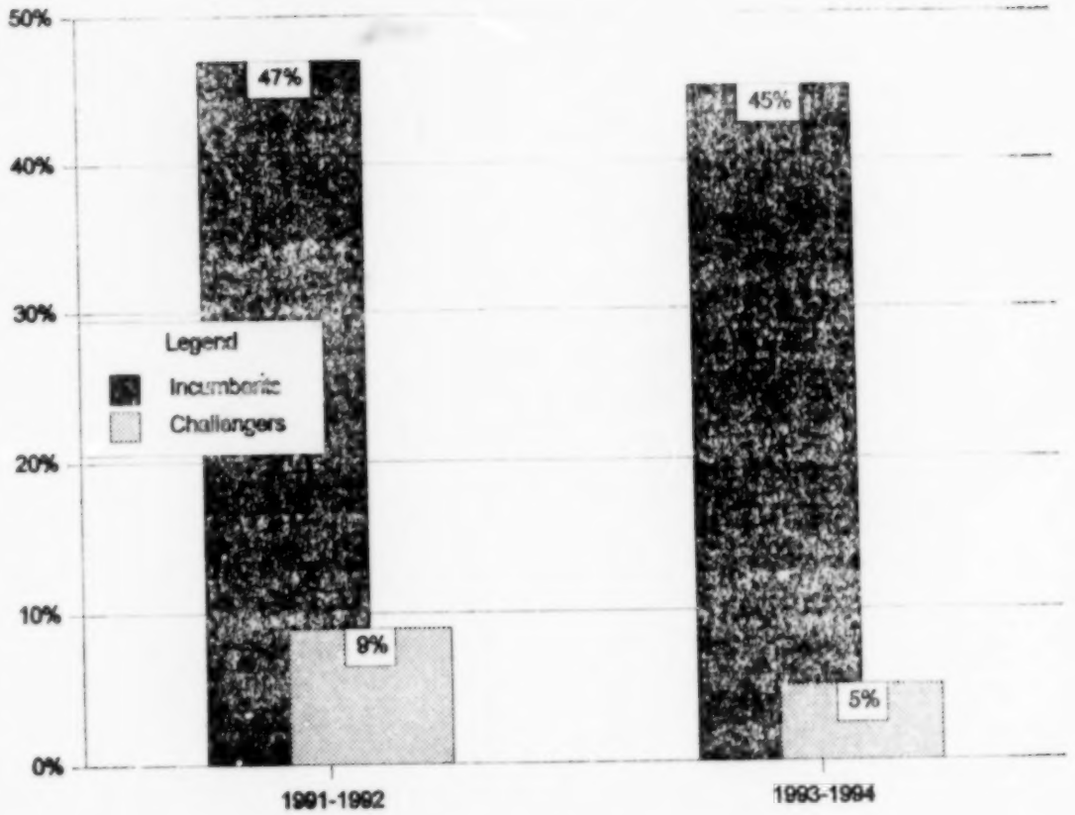
1992 Election Cycle



* For periods January 1, 1993 to March 31, 1994, and January 1, 1991 to March 31, 1992.

Source: *Washington Post*, May 10, 1994, from Federal Election Commission records.

Percentage of U.S. House Candidates' Total Contributions Donated by Pacs



For periods January 1, 1993 to March 31, 1994, and January 1, 1991 to March 31, 1992.

Source: *Washington Post*, May 10, 1994, from Federal Election Commission records.

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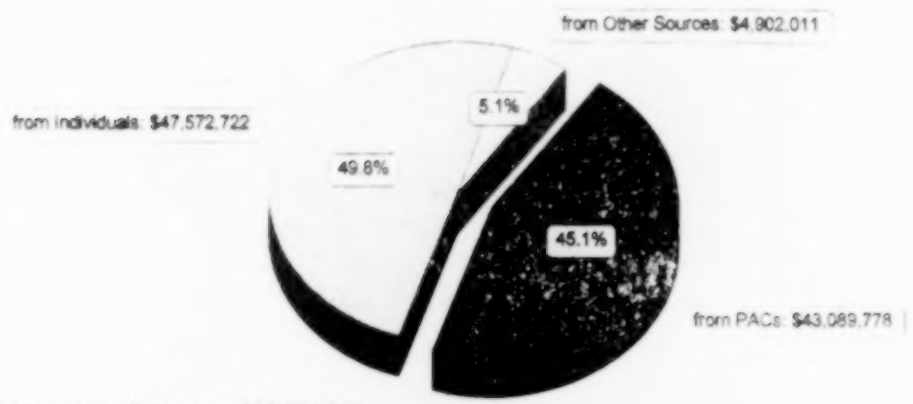
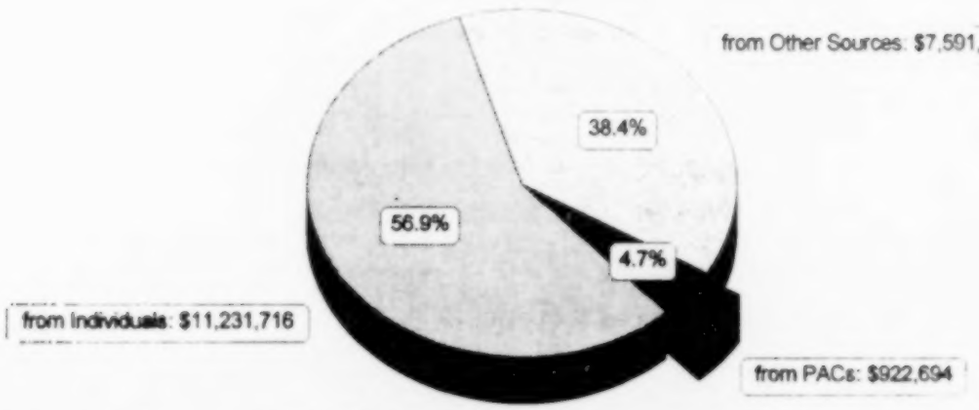
Comparison of Contribution Sources in 1994 U.S. House Campaigns

Incumbents



Total Incumbent Receipts: $95,564,511

Challengers



Total Challenger Receipts: $19,745,806

Source: *Washington Post*, May 10, 1994, from Federal Election Commission records.

* January 1, 1993 to March 31, 1994.